

# HEARINGS RELATING TO MADISON GUARANTY S&L AND THE WHITEWATER DEVELOPMENT CORPORATION—WASHINGTON, DC PHASE

---

## HEARINGS

BEFORE THE

### COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

### VOLUME IV

ON

HEARINGS INTO WHETHER IMPROPER CONDUCT OCCURRED REGARD-  
ING COMMUNICATIONS BETWEEN OFFICIALS OF THE WHITE HOUSE  
AND THE DEPARTMENT OF THE TREASURY OR THE RESOLUTION  
TRUST CORPORATION

---

AUGUST 3, 4, AND 5, 1994

---

Printed for the use of the Committee on Banking, Housing, and Urban Affairs

DOC  
Y4.B 22/3: S. HRG. 103-889  
v. 4

U.S. GOVERNMENT PRINTING OFFICE

83-858

WASHINGTON : 1995

---

For sale by the U.S. Government Printing Office  
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402  
ISBN 0-16-046763-2

## COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

DONALD W. RIEGLE, JR., Michigan, *Chairman*

PAUL S. SARBANES, Maryland	ALFONSE M. D'AMATO, New York
CHRISTOPHER J. DODD, Connecticut	PHIL GRAMM, Texas
JIM SASSER, Tennessee	CHRISTOPHER S. BOND, Missouri
RICHARD C. SHELBY, Alabama	CONNIE MACK, Florida
JOHN F. KERRY, Massachusetts	LAUCH FAIRCLOTH, North Carolina
RICHARD H. BRYAN, Nevada	ROBERT F. BENNETT, Utah
BARBARA BOXER, California	WILLIAM V. ROTH, JR., Delaware
BEN NIGHTHORSE CAMPBELL, Colorado	PETE V. DOMENICI, New Mexico
CAROL MOSELEY-BRAUN, Illinois	
PATTY MURRAY, Washington	

STEVEN B. HARRIS, *Staff Director and Chief Counsel*

HOWARD A. MENELL, *Republican Staff Director*

J. WILLIAM CODINHA, *Special Counsel*

MICHAEL CHERTOFF, *Republican Special Counsel*

NEAL E. KRAVITZ, *Deputy Special Counsel*

BETH O'NEILL MALONEY, *Counsel*

GLENN IVEY, *Counsel*

MITCHELL FEUER, *Counsel*

TIMOTHY P. MITCHELL, *Legislative Assistant*

DOUGLAS A. EPSTEIN, *Legislative Assistant*

LORI A. BEANE, *Legislative Assistant*

PATTY HAMEL, *Special Assistant*

KELLY CORDES, *Chief Clerk*

EMILY L. FRYDRYCH, *Assistant to Staff Director*

TERESA HO, *Legislative Assistant*

AMY L. KOSTANECKI, *Legislative Assistant*

SHEILA DUFFY, *Legislative Assistant*

MARTIN J. GRUENBERG, *Counsel*

COURTNEY WARD, *Staff Director, Securities Subcommittee*

RAYMOND NATTER, *Republican General Counsel*

IRA PAULL, *Deputy Republican Staff Director*

JOSEPH BRAUNREUTHER, *Republican Deputy Special Counsel*

ROMAN DARMER, *Republican Counsel*

DOUGLAS NAPPI, *Republican Counsel*

LAURA S. UNGER, *Republican Counsel*

JAMES C. WILSON, *Republican Counsel*

PAUL GOLDENBERG, *Republican Special Investigator*

WAYNE A. ABERNATHY, *Republican Professional Staff*

JULIE FALLEN, *Republican Legislative Assistant*

SHELLIE R. BERLIN, *Republican Legislative Assistant*

GILA ZAWADZKI, *Republican Legislative Assistant*

COLLEEN BARNETT, *Republican Staff Assistant*

BECKY CHAPMAN, *Republican Executive Assistant*

EDWARD M. MALAN, *Editor*

IRENE C. WHISTON, *GPO Editorial Assistant*

DONNA LEE KRAUSE, *GPO Editorial Assistant*



# CONTENTS

## VOLUME IV

WEDNESDAY, AUGUST 3, 1994

	Page
Opening statement of Chairman Riegle .....	1
Opening statements, comments, or prepared statements of:	
Senator Bond .....	2
Senator Shelby .....	2
Senator D'Amato .....	3
Senator Sarbanes .....	12
Senator Gramm .....	13
Senator Dodd .....	16
Senator Sasser .....	22
Senator Mack .....	25
Senator Faircloth .....	30
Senator Kerry .....	32
Senator Bennett .....	36
Senator Bryan .....	38
Senator Roth .....	40
Senator Boxer .....	43
Senator Domenici .....	45
Senator Campbell .....	48
Senator Moseley-Braun .....	49
Senator Hatch .....	52
Senator Murray .....	53

## WITNESSES

Lloyd M. Bentsen, Secretary, U.S. Department of the Treasury, Washington, DC .....	4
Prepared statement .....	188
Response to written questions of Senator Bond .....	196

## AFTERNOON SESSION

Eugene A. Ludwig, Comptroller of the Currency, Office of the Comptroller of the Currency, Washington, DC .....	61
Prepared statement .....	190
Introduction .....	190
Freedom of Information Act requests .....	191
Discussions at Renaissance Weekend .....	191
Telephone conversation with Margaret Williams .....	192
Conclusion .....	192
Joel I. Klein, Deputy Counsel to the President, Washington, DC .....	86
Prepared statement .....	193
W. Neil Eggleston, Associate Counsel to the President, Washington, DC .....	87
Prepared statement .....	193
Clifford M. Sloan, Associate Counsel to the President, Washington, DC .....	88
Prepared statement .....	194
Response to written questions of Senator Bond .....	227
Beth Nolan, Associate Counsel to the President, Washington, DC .....	89
Prepared statement .....	195

# IV

## ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

	Page
Edward S. Knight's, response to written questions of Senator Bond .....	208
Memorandum dated August 2, 1994, Secretary Bentsen activities from September 23, 1993 through March 21, 1994 .....	231
Washington Post article dated August 3, 1994, editorial by Lloyd Cutler .....	235
Memorandum dated March 11, 1994 from Eugene Ludwig to Ed Knight .....	237
Recusal memorandum dated February 24, 1994 from Eugene Ludwig .....	240
FDIA requests from the Washington Post and the Baltimore Sun papers .....	241
Memo to Hillary Rodham Clinton from Harold Ickes on March 1, 1994 regarding copy of Neil Eggleston's February 28, 1994 memo involving RTC and Rose Law Firm .....	245
Memo to Chairman Hove (FDIC) dated February 17, 1994 from Douglas Jones, "Retention of the Rose Law Firm" .....	253
Ethics memorandum issued by Bernard Nussbaum dated 2/22/93, 3/9/93, 5/4/93 and 7/2/93 .....	254

## ATTACHMENTS

- Tab 1—Letter from Stephen J. McHale, Deputy Assistant General Counsel (Administrative & General Law), Department of the Treasury, to Jane Sherburne, Office of the Special Counsel to the President (July 23, 1994).
- Tab 2—Letter from Lloyd Cutler, Special Counsel to the President, to Senator Riegle (August 3, 1994).
- Tab 3—Letter from Stephen D. Potts, Director of the Office of Government Ethics, to Secretary Bentsen (March 15, 1994).
- Tab 4—Letter from Secretary Bentsen to John E. Ryan, Acting Chief Executive Officer, Resolution Trust Corporation (June 30, 1994) and Memorandum from Secretary Bentsen to Robert P. Cesca, Deputy Inspector General, Department of the Treasury (June 30, 1994).
- Tab 5—Subpoena served on the Department of the Treasury on March 4, 1994, by Independent Counsel Fiske and Letter from Senators Riegle and D'Amato to Secretary Bentsen (June 22, 1994).
- Tab 6—Memorandum from Deputy Inspector General Robert P. Cesca to General Counsel Jean Hanson (June 27, 1994).
- Tab 7—Letter from Edward S. Knight to Senator D'Amato (July 1, 1994).

## THURSDAY, AUGUST 4, 1994

Opening statement of Chairman Riegle .....	269
Opening statements, comments, or prepared statements of:	
Senator D'Amato .....	277
Senator Sarbanes .....	279
Senator Gramm .....	282
Senator Dodd .....	285
Senator Mack .....	289
Senator Kerry .....	293
Senator Faircloth .....	296
Senator Domenici .....	298
Senator Bryan .....	300
Senator Bennett .....	305
Senator Shelby .....	307
Senator Roth .....	311
Senator Boxer .....	314
Senator Hatch .....	316
Senator Campbell .....	320
Senator Sasser .....	322
Senator Murray .....	328
Senator Bond .....	330
Senator Moseley-Braun .....	337

**WITNESSES**

Thomas F. McLarty, III, Counselor to the President, Former Chief of Staff to the President, Washington, DC .....	270
Prepared statement .....	520
Prepared statement of July 28, 1994 before the U.S. House of Representatives, Committee on Banking, Finance and Urban Affairs .....	523
Response to written questions of Senator Bond .....	585
Margaret A. Williams, Assistant to the President and Chief of Staff to the First Lady, Washington, DC .....	272
Prepared statement .....	527
Harold Ickes, Assistant to the President and Deputy Chief of Staff, Washington, DC .....	353
Prepared statement .....	533
Bruce R. Lindsey, Assistant to the President and Senior Advisor, Washington, DC .....	357
Prepared statement .....	547
Response to written questions of Senator Bond .....	587
George R. Stephanopoulos, Senior Advisor to the President for Policy and Strategy, Washington, DC .....	360
Prepared statement .....	551
John D. Podesta, Assistant to the President and White House Staff Secretary, Washington, DC .....	360
Prepared statement .....	553
Response to written questions of Senator Bond .....	590
Bernard W. Nussbaum, Former Counsel to the President; Partner—Wachtell, Lipton, Rosen & Katz, New York, NY .....	466
Prepared statement .....	556
Introduction .....	556
Meetings and contacts .....	558
The meetings and contacts were proper .....	576

**ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD**

Washington Post editorial by Richard Cohen, 8-4-94 .....	591
Various news articles relevant to the Clinton land deal .....	593
McLarty meeting talking points for Roger Altman .....	621
Memo dated 3-1-94 from Harold Ickes to Hillary Rodham Clinton .....	622
Altman letter regarding his recusal .....	648
Letter to Representative Gonzalez from Lloyd Cutler .....	650
Lindsey's notes of his call with James Lyons .....	550
Report by the Office of Government Ethics .....	653
Supplemental Hanson deposition .....	681

**FRIDAY, AUGUST 5, 1994**

Opening statement of Chairman Riegle .....	733
Opening statements, comments, or prepared statements of:	
Senator D'Amato .....	742
Senator Sarbanes .....	745
Senator Bond .....	747
Senator Dodd .....	751
Senator Mack .....	754
Senator Shelby .....	758
Senator Kerry .....	759
Senator Faircloth .....	762
Senator Bennett .....	766
Senator Bryan .....	768
Senator Roth .....	771
Senator Boxer .....	774
Senator Gramm .....	777
Senator Campbell .....	779

## Opening statements, comments, or prepared statements of—Continued

Senator Campbell—Continued	
Prepared statement .....	802
Senator Domenici .....	781
Senator Moseley-Braun .....	785
Prepared statement .....	803
Senator Hatch .....	788
Prepared statement .....	806
Senator Murray .....	789

## WITNESS

Lloyd N. Cutler, Special Counsel to the President, Washington, DC .....	734
Prepared statement before the U.S. Senate .....	807
Mr. Altman's recusal .....	807
The propriety of the "heads-up" .....	808
Corrective measures .....	808
Vince Foster's death .....	809
Prepared statement before the U.S. House of Representatives .....	810
The Treasury-White House contacts .....	810
The Standards of Ethical Conduct .....	812
The Fiske Report on Mr. Vincent Foster's death .....	816
Attachment—Chronology of contacts between White House and Treasury officials on the RTC investigation of Madison Guaranty .....	817
Contacts relating to RTC criminal referrals .....	817
Contacts involving Eugene Ludwig .....	818
Independent Counsel deliberations .....	819
Contacts relating to statute of limitations and Mr. Altman's recusal deliberations .....	819
Contacts relating to the February 24, 1994, RTC Oversight Board hearing .....	821
RTC Oversight Board hearing follow-up .....	822
Mr. Altman's recusal and discussions about Mr. Jay Stephens .....	822
Response to written questions of Senator Bond .....	851

## ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

An article from The Washington Post, August 3, 1994, entitled "A 'Heads-Up' History" by Lloyd N. Cutler .....	824
An article from The Wall Street Journal, August 5, 1994, entitled "Candor Was the Casualty" by James A. Leach .....	827
A memorandum to Senator Riegle stating the "Legal Basis of the RTC's Independence" .....	830
Letter dated July 27, 1994 to Representative Gonzalez, from Lloyd Cutler relating to a meeting between the President and Governor Jim Tucker on October 6, 1993 .....	832
Letter dated October 7, 1994 to Senator Riegle from James F. Fritzpatrick relating to Bernard Nussbaum, Former White House Counsel .....	835
Response to written questions of Senator Bond from Bernard Nussbaum .....	849
Department of the Treasury, letter dated July 23, 1994 from Stephen J. McHale to Jane Sherburn .....	855
Department of the Treasury, letter dated March 7, 1994 from Ronald Noble to Bernard Nussbaum .....	856

# HEARINGS RELATING TO MADISON GUAR- ANTY S&L AND THE WHITEWATER DEVEL- OPMENT CORPORATION—WASHINGTON, DC PHASE

---

## VOLUME IV

---

WEDNESDAY, AUGUST 3, 1994

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
*Washington, DC.*

The Committee met at 9:30 a.m., in room 106 of the Dirksen Senate Office Building, Senator Donald W. Riegle, Jr. (Chairman of the Committee) presiding.

### OPENING STATEMENT OF CHAIRMAN RIEGLE

The CHAIRMAN. The Committee will come to order. Let me welcome everyone in attendance today. It seems like it was not very long ago we were right back here in this room. I think we adjourned last night shortly after 2:00 a.m., so we are back at it this morning.

Today we start the fourth day of the hearings being conducted here by the Senate Committee on Banking, Housing, and Urban Affairs on the so-called Madison Whitewater matter authorized by Senate Resolution 229.

I want to just indicate what our plan for the day will be before we go to our first witness today. We will have four panels that will appear before us in the course of the day.

The first one will of course consist of hearing the Secretary of the Treasury, Mr. Lloyd Bentsen, who is here with us now.

The second panel will involve hearing Mr. Eugene Ludwig, who is the Comptroller of the Currency of the United States.

The third panel will consist of Mr. Joel Klein, who is Deputy Counsel to the President.

Mr. Neil Eggleston, who is the Associate Counsel to the President.

Mr. Clifford Sloan, also Associate Counsel to the President.

And Beth Nolan who serves in the same capacity.

The final panel will consist of Thomas "Mack" McLarty, who is the Senior Advisor to the President of the United States and Former Chief of Staff to the President.

And Ms. Margaret Williams, who serves as Chief of Staff to the First Lady of the United States.

As with our prior hearings, we are looking forward to hearing from these witnesses so they can elaborate on the events relating

to that aspect of the resolution that we are operating under dealing with the question of whether any improper conduct occurred regarding communications between officials of the White House and the Department of the Treasury, or the Resolution Trust Corporation, relating to the Whitewater Development Corporation and Madison Guaranty Savings & Loan Association.

Senator BOND. Mr. Chairman.

The CHAIRMAN. Yes, Senator Bond.

### OPENING COMMENTS OF SENATOR BOND

Senator BOND. Before you start, I have a parliamentary inquiry that has to do with the schedule.

Yesterday, of course, you know for the first time, we heard Mr. Altman accuse Ms. Hanson of misleading him and the Committee and he told us, for the first time yesterday, that when he was asked if there were any contacts with the White House, after I asked him about the criminal referral, he turned to Ms. Hanson and she nodded her agreement with his answer.

Now as far as I know this was not brought out in any of his sworn depositions. When he called me to tell me that there had been other contacts that he had known about, he did not mention that.

It seems to me that the Committee ought to consider, in light of this new factor, whether it would be appropriate to bring Ms. Hanson back to comment on that, because we do have a conflict between the testimony of Mr. Altman and Ms. Hanson.

And since this has just come up, I would just offer for your consideration, along with that of Senator D'Amato, whether it might be worth bringing Ms. Hanson back for follow up questions to see if her recollection squares with that of Mr. Altman as to what he asked her and what her nod in the negative implied at that time. That may have something to do with how we try to resolve the irreconcilable positions that Ms. Hanson and Mr. Altman had in that testimony.

The CHAIRMAN. Well Senator Bond, I think it is a reasonable question, and particularly so because it was cited by Mr. Altman yesterday as part of his presentation, and we of course do not know at least her version of what that exchange was about.

My initial instinct on this is to suggest—she was here for the better part of 6 or 7 hours, a long period of time. I would be inclined to want to have our—she has been deposed before—to have our Committee investigators depose her on this point, and to draw her out to let her tell her observations or her version of that situation, and then based on that deposition addition or that new deposition on that point, then make a judgment as to whether we need to have her back in here or not?

Senator SHELBY. Mr. Chairman.

The CHAIRMAN. Yes, Senator Shelby.

### OPENING COMMENTS OF SENATOR SHELBY

Senator SHELBY. I understand what you want to do as far as, and you certainly can do it as the Chairman. I understand all that.

But would not the best witness be Ms. Hanson, herself, if she were shown that video and if she could elucidate on what that nod

meant, I mean, I think that would be, and the Committee took a little time watching that. It probably would not take 5 minutes.

The CHAIRMAN. Well——

Senator SHELBY. Sometime today or tomorrow.

The CHAIRMAN. I am open to suggestions from all Members. I have not seen us do anything in 5 minutes around here, including say good morning, so I think it would be——

Senator SHELBY. But I think it is a very important point.

The CHAIRMAN. It is an important point, and I agree with you on that, but I think maybe the orderly way to do this, the way we started out, we deposed everybody, and people testify under oath, and she would have the opportunity to do that and see what her response is. And then I think we will circulate that to everybody and we can make a judgment.

I think we can have the information and then decide exactly what it amounts to and what we want to do with it.

Senator SHELBY. When the lawyers would be deposing here, I assume they would be showing her the video?

The CHAIRMAN. Absolutely.

Senator SHELBY. What did you mean by the body language?

The CHAIRMAN. Exactly.

Senator D'AMATO. Mr. Chairman.

The CHAIRMAN. Senator D'Amato.

#### OPENING COMMENTS OF SENATOR D'AMATO

Senator D'AMATO. I have absolutely no problem with the manner in which you described giving her the opportunity and her counsels to review with her counsel. I am sure they already know and they have watched and heard about this.

But I do think we should, at the very least, give her the opportunity to decide whether or not she wants to come in. We may decide, after the depositions, that we think it is appropriate or not, but I think if she thinks she wants that chance to do it, she certainly should be given it, and that is the best evidence to have her here and to respond.

But certainly the initial, if we can get an initial contact and the time to get her deposed and if her counsel is ready to bring her in here without being deposed, why that is another matter, so maybe we should address that question immediately and have staff begin the preliminary contacts to see whether or not we can set up a time pretty quickly to do that.

The CHAIRMAN. Well I am going to give guidance to the Committee staff to be in touch with Ms. Hanson to arrange to get her response to what took place in that exchange, and once we have that, we can evaluate it.

She may confirm what he has said. If she has a different recollection, we will have that and certainly if she asks to come back on that point, I think we would have to respect that desire.

Senator SHELBY. Mr. Chairman, as I recall, I want to review the transcript because I think she was asked about that, whether or not an exchange occurred. Obviously the assistance of the video tape may help, but I would just urge, and I think what you have described as a process sounds reasonable enough here, but I hope

these hearings do not sort of become tantamount to the gift that keeps on giving.

I mean, at some point here, we have got to move on. And then I can see where Mr. Altman, because there were a couple of other people sitting at that table, would want those people deposed to see what they had to say about the conversation. This can just go on interminably. So I would hope that we would try to discern what you can and then try to limit this back and forth.

Senator BOND. Mr. Chairman, clearly it would be expeditious to set up a deposition as you and Senator D'Amato have described. I would urge you to do that, and then make the determination based on what is said at the deposition whether Ms. Hanson wishes to come back to answer before the full Committee or whether we feel we need to have her back.

Clearly, we do not need to ask all the others, but I would agree with the procedure that you have outlined. It seems to me only reasonable since this is a critical point.

Thank you.

The CHAIRMAN. Well we will proceed in that fashion and we will begin now so that we get a timely response to the question.

Mr. Secretary, former colleague of many years in this body, we are pleased to have you here.

I am going to ask you now to stand and take the oath.

[Witness sworn.]

The CHAIRMAN. Now it is my understanding that you have a statement that you want to deliver and make it part of the record, and we would like to hear from you now.

### **TESTIMONY OF LLOYD M. BENTSEN, SECRETARY, U.S. DEPARTMENT OF THE TREASURY**

Secretary BENTSEN. Thank you very much.

Mr. Chairman, Senator D'Amato, Members of the Committee, I would like to cover a number of points this morning.

For organization's sake, I want to present my testimony in four parts.

First, I want to describe my relationship to the Oversight of the Resolution Trust Corporation and how my office operates.

I want to next address my recollection of events.

I would like to also discuss the steps I have taken over the past few months.

And, finally, I want to cover the conclusions which have been reached and the actions that I will take.

Knowing that the responsibilities of a Cabinet Officer are different from those of a U.S. Senator. I put two systems in place when I came to Treasury.

Senator KERRY. Mr. Chairman, I apologize to the witness. I am a little hard of hearing and—

The CHAIRMAN. I think if you could just pull that mike a little closer, and you might want to put the papers up on the front of that wooden stand, then I think it will move toward you, and then everyone can hear you clearly.

Secretary BENTSEN. You want me to start over?

The CHAIRMAN. No, that is all right.



Secretary BENTSEN. And finally I want to cover the conclusions which have been reached and the actions I will take.

Senator can you hear me?

Senator KERRY. Yes, sir.

Secretary BENTSEN. OK.

Knowing that the responsibilities of a Cabinet Office are different from those of a congressional office, I put two systems in place when I came to Treasury to help me make the transition.

First, as it regards the RTC, I serve as Chairman of the Oversight Board. By law, I am prohibited from involving myself in any day-to-day activities. I can discuss policy in broad terms, but I cannot intervene in a case-specific matter.

I asked my Legislative Director, Mike Levy, to make it clear if Members of Congress or staff inquired about specific cases, that they should be directed to the RTC and not to me.

Second, I have organized my office such that all paper work on matters of policy and Treasury's varied operations flow through my Executive Secretary, Mr. Ed Knight. Ed is the gatekeeper. It is his job to make certain that what crosses my desk, as it regards the RTC, or any issue, for that matter, contains only those materials I should be seeing, and nothing else.

We have a thick manual about how information flows to my office. I insist on written briefings. It makes the best use of my time. It is the best way I found to absorb information. When I am asked for a decision, I expect a memo that gives me the background, lays out the options, tells me what the staff recommends. That way, I can either make the decision, or let my staff know I want more information, or I want a meeting on the issue. That is how I deal with substantive issues, not in some bull session.

I prefer the distilled thoughts that they finally come up with as they prepare a memorandum to me, and I want it a relatively short one.

In short, I have a very organized office procedure. I have run my office like that for years. I did it in business, I did it in the Senate, and I do it now as Secretary of the Treasury.

When I was building a business, a good part of my time was spent on an airplane going about the country, and I would have my associates prepare the memorandums for me so I could study them on the plane, or if I had some spare time, I would do that.

Let me give you an example.

When I was in business, I can recall I had a decorator in to decorate my office. And he said he was going to put an ottoman in my office, and I said, do not you put an ottoman in here. I do not have time for people to put up their feet. They are not coming here to visit. We are trying to do business. And that is the way it has been.

Mr. Chairman, if someone wanted to communicate with me in a meaningful way, that is how they would have done it, through my in box with a memo, with a meeting on which I was briefed in writing.

That is not to say I do not have occasional impromptu visits from or conversations with my staff, because I do. That often happens if there is a developing crisis that has to be dealt with. But for matters of any import, I prefer paper.

I asked my staff to go back and look at my office records to see what I was involved in over the period in which the Committee is interested.

I have a memorandum I want to put into the record. My staff says that from September 23, 1993, until March 21, 1994, I had nearly 800 meetings on 560 topics. I attended 130 meetings at the White House. Met with 51 Members of Congress. Testified on the Hill 11 times.

I received more than 500 written briefings prepared for my meetings. I delivered 60 speeches, gave 80 interviews, had 25 press conferences, and I want you to get this. I received over 2,400 memos and during that period, I traveled to 7 countries and 9 States.

This entire issue revolves around meetings that I understood were on the issue of handling press inquiries about the Madison Guaranty referral, or on the procedures that the RTC would follow in pursuing civil claims.

There are differing recollections, but they are about actions that two independent investigations tell us broke no criminal law and violated no ethical standard.

I have turned the Treasury Department upside down. I have turned my memory inside out. We went through thousands and thousands of documents. And I cannot find one written briefing to me on these White House meetings, not one.

It was not until March 3rd that I learned the extent of these meetings. I issued a statement about the meetings and said that I had not attended them and did not know about them.

I maybe walled off from most RTC matters, but I am responsible for what happens at the Treasury Department and I accept that responsibility. And that is why I asked immediately for the Office of Government Ethics to examine these contacts.

They are a nonpartisan agency. They are the experts. And preparing for this hearing, I agreed to the Committee request to avoid looking at materials regarding the case until I gave my deposition to the Committee Staff.

I agreed to that request, although it sure frustrated me, because I wanted to wade into this and find out all I could. I had to wait over 4 months to start looking at these papers.

After I gave my deposition last week, I sat down and began to read through the material. I saw nothing that changes my recollection.

Let me lay out for you what my basic recollection is about these matters. First, I read in the press, some time in October, about criminal referrals and Madison Guaranty.

Second, on February 1st, Roger Altman and Jean Hanson came to my office. Roger told me he was thinking of recusing himself. And the other subject that came up was the legislation on extending the statute of limitations.

Later that month, Roger told me he decided not to recuse himself.

On February 23rd, I met with Roger and Jean Hanson briefly, in advance of the RTC Oversight Hearing the 24th. I again told Roger Altman the recusal issue was a personal issue for him.

On the 25th of February, I learned that Roger had testified the day before as to one meeting with people from the White House.

I had been at that meeting. I left to go to a working lunch with some CEO's. I did not hear his testimony because I was not here at that point.

On March 3rd, I read in the press about two additional meetings. It was then that I asked for the OGE examination of the contacts and issued my statement.

Now I would like to review the subsequent events.

Our Treasury Department Inspector General's office was asked to support the Office of Government Ethics examination. Mr. Fiske, the Independent Counsel, was already looking at this from the standpoint of criminal statutes.

After I asked the Office of Government Ethics to examine the ethics issues involved, Mr. Fiske asked the Treasury Inspector General to suspend his work while Mr. Fiske's investigation was underway. And the Office of Government Ethics also independently decided it would hold off until Mr. Fiske's work was complete so as not to interfere.

Now I want to point out the lengths to which Treasury Department, at my direction, went to cooperate with Mr. Fiske, with the Inspector General, and with the Congressional Committees.

Every scrap of paper that remotely looked like it might conceivably have some relation to the Madison Guaranty Savings and Loan or to contacts with the White House was turned over to various investigators, something on the order of 6,500 pages.

We went through hundreds of thousands of documents with investigators to find the ones they needed. We used extra warehouse space to hold back our trash.

I brought in professional investigators from the IRS to go through the top offices of the Treasury, mine included.

We removed computers from the offices of those involved, including those used by the support staff, had experts go through them to find anything that would be useful. They worked around the clock quite literally.

We searched offices nationwide to see what could be found, and my staff was always promptly available to Mr. Fiske, the IG and the Congressional investigators to answer questions.

Now when Mr. Fiske completed his report on this phase of the examination, and concluded that no criminal laws were broken, I asked the Office of Government Ethics to complete its examination of the contacts and report back to me.

Over the past weekend, I received the Office of Government Ethics' report. I released it to the public. And then I sent it to the President's Counsel. I also sent it to every Member of this Committee and the House Banking Committee.

The Office of Government Ethics, after a careful analysis of the independently gathered facts, says I can conclude that those working at the Treasury did not, repeat, did not violate any of the standards of ethical conduct for employees of the Executive Branch of Government.

I heard a Senator say something the other day that stuck with me. He said that, in this town, an allegation is synonymous with conviction without benefit of a trial or a hearing.

Clearly, in retrospect, it might have been better if some of these meetings or contacts had not taken place, or had occurred in a dif-

ferent context. But when you boil it down, no criminal law was broken, and the people who work at Treasury did not violate the ethical standards. And no one at Treasury intervened in any way or interfered in any RTC action.

The Office of Government Ethics report did say it was troubled by some of the contacts. And it raised important issues that I believe should be addressed.

The Office of Government Ethics said it appeared that there were misconceptions by Treasury officials that may have contributed to the contacts. Those include a possible lack of appreciation of the difference between a Treasury function and one belonging to the Resolution Trust Corporation and what rules apply.

They also include a misconception about the standard on the use of nonpublic information, and a misconception about the function of a recusal.

Those are very good points.

I would point out the unique situation in which these contacts occurred no longer exists. Mr. Altman is no longer Acting CEO of the RTC. And there no longer are lines of responsibility here that could give rise to misconceptions about job functions and the rules that apply. So the possibility for the jumbling of roles and a confusion about the rules has been greatly lessened.

I have only had this report for a few days. I am not going to make any knee-jerk reaction to what clearly are complex issues involving management of Treasury functions. I want to reserve judgment on that.

I am not going to make my decisions in the heat of debate. I will study this information, and any thoughts the Committee might have, and take whatever steps I consider appropriate.

Now before I conclude my testimony, I want to remind the Committee of one important point. The Treasury Department has a law enforcement role, as do a number of other Government agencies. It is critical that the Department be able to communicate with other agencies and the White House when necessary.

Let me give you some examples.

The White House may need to know that the Secret Service is investigating a crime in which a visiting dignitary is involved. Or the ATF might have an arms export case involving high officials of this Government, or of a foreign country.

Clearly, there is a legitimate need to discuss matters in the proper forums with the proper individuals. There must be a mechanism in which public officials can communicate with one another without fear that they are stepping over the line.

We have seen how grey areas can be—where there is one set of rules at the RTC, another at Treasury. And we have seen how there sometimes is no bright, white line that gives public officials the guidance they need.

I intend to work with the Attorney General or Inspector General, the Office of Government Ethics, and what ever this Committee might suggest insofar as remedies that would offer our employees better guidance. And it should be clear for our officials how to handle the issue of confidential information as it regards press inquiries.

Mr. Chairman, Members of the Committee, two quick points in closing.

First, I have been in public service for nearly 30 years. I have seen everything from McCarthy hearings to Watergate, Iran-Contra, the Church Committee, all of it.

What you have here is a unique confluence of circumstances that, when you strip away all the rhetoric, resulted in actions that broke no criminal law, did not violate the Ethics Rules, and did not in any way affect the Madison case.

I think that when Congress concludes these hearings, Congress and Americans who have followed this matter will conclude the same.

And finally, I am proud that throughout it all, the Treasury Department has continued to operate at 100 percent and done a good job.

The CHAIRMAN. Thank you, Mr. Secretary.

You mentioned, I think, a document along the way for inclusion in the record, and without objection, we will include it in the record.

I want to start with the testimony before this Committee at the Oversight Hearing on February 24th.

You mentioned today that at a certain point, you left that hearing, and I recall it clearly because you had another engagement and you asked to be excused.

After you left, this exchange occurred with Mr. Altman that really has triggered not just these hearings, but also a complete effort by Mr. Fiske, who moved to subpoena a number of people and take them before the Grand Jury. So it was a very serious matter.

We spent a long time yesterday discussing it. I think, in one way or another, every Member of this Committee found that testimony that day troubling to one degree or another. We spent a lot of time going over it.

And because you were not here at the time, I think it is very important that you go over it, and perhaps you have done so.

So my first question is, to you, have you had a chance to review the testimony that has kicked this off and the completeness or lack of completeness of Mr. Altman's answers that day?

Secretary BENTSEN. Yes, I have.

The CHAIRMAN. And do you have a comment about it or reaction to it?

Secretary BENTSEN. Well that is the first I had heard of such a meeting, and frankly, it concerned me. And then very shortly thereafter, I read, I guess it was probably March 3rd, about a couple of additional meetings. And that is when I immediately called for a full investigation by the Office of Government Ethics to get to the bottom of it and see what had happened.

The CHAIRMAN. I think, as we listened yesterday, and I think if you, this went on until 2:00 in the morning, so I do not expect that you necessarily saw it, and there certainly is not a transcript available yet to read.

But in the course of the hours of discussion with Mr. Altman, I think it is fair to say that he acknowledged that his answers, in many cases, were not as complete as they should have been, or that there was a serious difference of interpretation as to what an in-

tended question meant and the way he chose to receive the question and respond to it.

Secretary BENTSEN. That is apparently the case.

The CHAIRMAN. I think that is a problem we cannot have again from anybody in the Treasury Department, whether it is Mr. Altman, Mr. Steiner, or anybody else that comes before this Committee.

I frankly do not think there was an acceptable excuse for it having happened on the 24th. We have hashed that out here last night. And every Senator and the public can make their own judgments.

But I must just tell you very directly, and I want to say it publicly, and not just say it to you in a private way.

Yesterday, your Chief of Staff was here, Mr. Steiner. He was here because he is a relevant witness under the inquiry we have been required to do here.

I am sure you are familiar with the diary entries that he prepared and which were the subject of our discussion yesterday.

I assume that he is Chief of Staff because he enjoys your full confidence.

Would that be fair for me to assume?

Secretary BENTSEN. That is right. That is right.

The CHAIRMAN. I asked this morning what he is paid for doing that job. His salary, I am told, give or take a few dollars, is \$96,830.00 a year?

Secretary BENTSEN. That is very close to mine.

The CHAIRMAN. Well, it is a good high salary and it is a lot more than most people in the country earn, and he earns that amount of money because it is a very important position. Being Chief of Staff to you of this major department is not an insignificant job, as you know best.

Yesterday, when we questioned him about his diary entries, which are obviously embarrassing to him, we understand that, we have got sympathy for him as a result of that, but this inquiry goes way beyond that. It goes to the question of the accuracy of events at the time, and whether testimony we were given was full and complete.

That same standard applies now whether testimony we receive from him yesterday, or any other witness, is full and complete.

At one point, yesterday, Senator Sarbanes importantly and skillfully had to take a question that he had posed to Mr. Steiner, which Mr. Steiner answered in a very, I thought, oblique and less than complete and candid way, and Senator Sarbanes had to take and shave down the conditions that were being put in Mr. Steiner's answer.

After he had done so on at least two occasions, the answer turned, in effect, from a yes to a no. I mean, it completely changed the answer that was being given.

I came away from it with the feeling that it reminded me too much of what I think happened here on February 24th in terms of there being less than a full, direct, blunt, candid answer.

I realize that there are a lot of reasons why that could be difficult to do in this setting, but that does not justify it, and espe-

cially for any high ranking official, whatever their age, who carries the kind of responsibilities that people carry.

I say it because I just cite that as an example, not to zero in on him per se, but to cite that as an example that is as recent as yesterday, that I would like to have an assurance that in the future, and I think the only person that can give that signal and have it really resonate is you, not us, that any other Treasury official that comes before this Committee, either now or in the future, when they are asked direct questions, give direct, full, complete answers right then on the spot.

It has always been my experience that that has been your standard. I have never seen you operate any other way. I would like an assurance that that is going to be a clear signal that anybody that comes in here representing the Department in the future will also follow.

Secretary BENTSEN. Mr. Chairman, that certainly is my intention and certainly my direction to anyone representing Treasury.

I might tell you what our own counsel told me insofar as answers. I said, do you have any suggestions? And he said, yes. Speak with candor, and clarity, and do not guess.

The CHAIRMAN. Thank you.

Senator D'Amato.

Senator D'AMATO. Thank you very much, Mr. Chairman.

Mr. Secretary, I note, looking at the Inspector General's report, that it did not address the issue of whether or not Mr. Altman was fully candid with the Congress.

Yesterday, it emerged that at least 6 witnesses who have either testified or have given depositions have contradicted Mr. Altman on key facts.

Mr. Altman indicates, himself, that he was not fully forthcoming as it relates to the testimony he gave on the 24th.

I think that is why it took as long as it did to attempt to get the record to even reflect the events that transpired.

Was there an additional meeting that we should have been told about?

Were there additional contacts that we should have been told about, given the questions that were asked by the various Members to Mr. Altman on the 24th?

I think that it was painful to finally get him to the point where he admitted that there was a meeting on February 3rd. Yes, the issue of recusal was something that was discussed and was at least of some significance even though, at times, Mr. Altman did not want to admit that recusal had any relevance to the Whitewater matter.

I mean, I still find that troubling, perplexing, and interesting, that you could maintain, or that he attempted to maintain, and does, that the issue of recusal had nothing to do with Whitewater.

Well, what was it about?

Of course, it was about his relationship with the Clintons and whether or not that placed him in an untenable position. Clearly it did.

Having said that, the contradictions that I will allude to and will send to you in some detail, are Mrs. Hanson's contradiction as it relates to her instructions to brief White House officials.

Question. Would she go on her own to brief Bernie Nussbaum?

We have her version, which I believe is substantiated. Mr. Altman does not believe he did that. He says he did not do it.

Mr. Roelle testifies and this is the second contradiction that Altman told Hanson, he told her to brief Bernie on October 6th, and two that Roelle notified Altman about these referrals.

Then we have a third contradiction. Mr. Ickes about details of the meeting. I am not going to ask you to respond to these, so do not worry about that, nor to keep all of them.

That is why I said I would then send them to you with some detail.

We have a fourth, and I will try to summarize them quickly. Fourth, as a conflict, Mr. Steiner's diaries and again, I think the Members of the Committee have great regard and compassion for Mr. Steiner. Because I believe that those diaries were the best evidence of what took place.

And he was pained. He was pained and talks about the lessons of it, and I think he found himself in an awkward and an embarrassing position and I wish his counsel had been more concerned.

I do not know who his lawyer is, I have to tell you. I would like to find out, but his attorney, what he allowed that young man, in my opinion, to do to himself should disqualify him for, I mean, that, that was incredible. That was incredible. But there is the diary of Josh Steiner.

Mrs. Williams, she contradicts Mr. Altman concerning the February 3rd meeting.

Mr. Podesta contradicts, I believe, in his affidavits, Mr. Altman as it would be necessary to correct the record of March 1st and supplement, and he talks about the issue of recusal.

Finally, another Treasury employee, Ben Nye, he testifies that Kulka briefed Mr. Altman.

In any event, we will enumerate these, and send them to you for review.

The Inspector General, as I have indicated, has not covered this issue of the veracity or the truthfulness or the completeness of the answers of the hearing of the 24th.

And I would like to get an indication as to what and how you intend to deal with that when you get an opportunity to review these materials.

I think that is important and I would appreciate that.

Secretary BENTSEN. Senator, I will be pleased to receive them.

Senator D'AMATO. We will send them to you.

And I thank the Chair.

The CHAIRMAN. Senator Sarbanes.

#### **OPENING COMMENTS OF SENATOR SARBANES**

Senator SARBANES. Thank you very much, Mr. Chairman.

Mr. Secretary, welcome.

Mr. Altman and Ms. Hanson directly contradict one another about on what basis she went to see Nussbaum and to report to him back at the end of September.

Do you have any knowledge about that matter?

Secretary BENTSEN. No, I did not. I did not have knowledge of it.



Senator SARBANES. And do you have any perceptions now on this issue of whether Altman tasked her to go or whether she went on her own?

Secretary BENTSEN. No. What you have in this, Senator is a situation, things that happened over 5 to 10 months ago, and you obviously have different recollections by the parties involved. That is not surprising.

Senator SARBANES. Now you met with Altman and Hanson, I take it, on the 1st of February, and Altman discussed with you that he was thinking of recusing himself?

Secretary BENTSEN. That is correct.

Senator SARBANES. And then again you met with him the day before the hearing here on the 23rd of February?

Secretary BENTSEN. That is correct.

Senator SARBANES. And again, I take it, the issue of recusal came up in your discussions with Altman?

Secretary BENTSEN. Yes, I think it did.

Senator SARBANES. Now he has indicated to us that you in effect counseled or advised him to recuse himself.

Secretary BENTSEN. I understand that he does.

Let me say this. I sympathized with him a great deal. I thought he was in a tough position. He might have taken that and interpreted it that way. But I also very clearly, and I do not remember any such specific recommendation, but I do, I do recall very definitely this.

That I told him it was his decision to make. It was his judgment to exercise. That I did not know the facts in that case, did not have it, and was in no position to make that determination or tell him what he should do.

Senator SARBANES. Did he indicate to you, in the second meeting on the 23rd of February—he met with you on the 1st of February and then he went to that meeting at the White House where the recusal matter arose.

He then met with you on the 23rd of February. At the second meeting, did he indicate anything about what had transpired at the White House meeting on the recusal, and whether he felt he had been put under pressure not to recuse himself at that meeting at the White House?

Secretary BENTSEN. I do not remember his stating that to me.

Senator SARBANES. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Gramm.

#### OPENING COMMENTS OF SENATOR GRAMM

Senator GRAMM. Thank you, Mr. Chairman.

Senator Bentsen, I want to ask you a couple of questions and then get—

Secretary BENTSEN. Well I was called Senator for a long time, and I accept that.

Senator GRAMM [continuing]. Fairly deeply into a couple.

The Treasury Department has about how many employees? Just guess.

Secretary BENTSEN. Well it is a guess, but it is a bunch. I think it is on the order of 160,000 people.

Senator GRAMM. How many people at the Treasury Department did you actually hire that were your people?

I thought I remembered when you went over from the Senate—

Secretary BENTSEN. Well I took Sam Sessions. Sam Sessions went over with me. Jack DeVore went over with me. Maurice Foley went over with me.

Senator GRAMM. Would you say of the 160,000 that fewer than 10 were, quote, your people?

Secretary BENTSEN. I think that is correct.

Senator GRAMM. Mr. Altman was the President's appointment. While I am not in any way suggesting you were in any way unsupportive, he was not your nominee?

Secretary BENTSEN. No, that is correct.

Senator GRAMM. And the same would be true of Ms. Hanson?

Secretary BENTSEN. Yes, that is right.

Senator GRAMM. So basically in this 160,000 person agency, you have about 10 people that are your people, that came with you.

Secretary BENTSEN. That is correct.

Senator GRAMM. I would just like to say, having listened to Jack DeVore, and Jack is your Press Secretary, that as a person that I have worked with, and in some cases worked against, I think you were well-served by having a few gray hairs over in your Department.

I was struck, yesterday, by—

Secretary BENTSEN. Let me interrupt a minute about Jack DeVore, because that is a long-time friend.

He is the kind of a fellow that you would not hesitate to make guardian of your children.

Senator GRAMM. I guess people assume that we sit up here and ask questions and do not learn anything. One of the things I have learned is, if you are trying to run the Government, you want a few people that have some experience, that know what they are doing, and I think you were blessed by having him.

Secretary BENTSEN. Thank you.

Senator GRAMM. Now I want to go to the testimony of Ms. Hanson. Mr. Secretary, I know that a lot of this stuff never bubbled up to you, or if it did, it bubbled up at a time when you were doing 50 other things. One of the things I am also convinced of is that we can never, ever have the acting head of an agency like the RTC be a person who has line authority in the Executive Branch of Government. That must never happen again, and as long as I am here, given the ability under the Senate Rules for one Member to stop something, I intend to stop it.

But Secretary Bentsen, you have worked with Ms. Hanson. She is your Counsel, the General Counsel, for the Department, so you know her pretty well?

Secretary BENTSEN. That is correct.

Senator GRAMM. Now on September 29th, Ms. Hanson went to the White House. As far as we know that is the first meeting she had ever had where she went over to the White House to visit with someone as senior as Mr. Nussbaum and a handful of other people. There is conflicting testimony. I do not expect you to know who is

telling the truth, but I want to ask you some questions related to what you might know or have feelings about.

Secretary BENTSEN. All right.

Senator GRAMM. Ms. Hanson says, under oath, that she was notified on behalf of Mr. Altman about these 9 referrals for criminal prosecution, and that Mr. Altman told her to go to the White House and tell Mr. Nussbaum. In fact, we also have another sworn statement in which Mr. Roelle says he was present in the room when she was told to communicate that information. None of these facts you know independently and we all understand that. But here is the point. Ms. Hanson is relatively young, she is relatively new on the job, and she is going to the White House to brief the President's Counsel on a criminal referral that has mentioned the President of the United States. She made, in her testimony, a major point of the fact that never, ever would there have been any possibility that she would have undertaken, on her own, that first time, to go to the White House for that meeting, had Roger Altman not told her to do it.

I am not asking you to inject yourself into what is true and what is not true, but in your opinion, leaving everything else aside, do you believe, knowing her, knowing her position, knowing how the White House works and the Treasury works, do you believe it is likely that she would have initiated that contact without somebody telling her to do it?

Secretary BENTSEN. That is an interesting question, Senator.

Let me—she is a very competent, able person. She has a lot of self-confidence. I think that is possible, yes, possible.

Senator GRAMM. You think it is possible that she, on her own initiative, without the clearance of anybody else, would have undertaken that activity?

Secretary BENTSEN. I said possible.

Senator GRAMM. Do you think it is likely?

I know these are subtle distinctions, but I do think they are important. I think it is a fair question.

Secretary BENTSEN. I do not really want to be the judge of that, Senator.

Senator GRAMM. The recusal issue obviously has become a big issue. I have to admit, Mr. Secretary, in sitting here yesterday, and we sat here for 12 hours, I was stunned at our inability to get an answer out of Mr. Altman. I was stunned by the literally dozen clear contradictions. I want to read, from the front page of the Washington Post this morning, the following statement. This is an analysis article which appeared on the front page of the Post. Maybe you read it.

Altman's statement about White House Treasury discussions on the Whitewater case triggered a flurry of hurried sessions at the White House, beginning that afternoon and continuing over the next several days. Senior officials, many of whom had participated in the very meetings Altman had failed to mention to the Senate, scrambled to determine what to do about his testimony. The concern was so great that Deputy Chief of Staff Harold Ickes told Chief of Staff Thomas "Mack" McLarty about the difficulties with Altman's testimony the next day. Associate Counsel Neil Eggleston, one of the two White House lawyers who had attended the Senate hearings, called White House Counsel Bernie Nussbaum on vacation in Mexico to alert him to the problem.

Now obviously, this thing was not only bubbling, it was boiling.

Did any of this ever, in any way during that period between the hearing on February 24th and the last letter on the 21st of the next month, a letter that, by the way, in no way answered the questions that were asked or in no way cleared up things in my humble opinion, did any of this ever, in this boil that was going on at the White House and the Treasury, did any of this ever bubble up to you?

Secretary BENTSEN. I do not think it did.

The CHAIRMAN. Senator Dodd.

#### OPENING COMMENTS OF SENATOR DODD

Senator DODD. Thank you, Mr. Chairman.

Mr. Secretary, welcome back to the Committee let me just make one observation, at the outset, and I think it is worthy of noting, because I think it does go to some of the difficulties.

Secretary BENTSEN. Let me say to you, Senator, that a lot of things happen over there that do not get to me.

Senator DODD. Just one observation that I do not think needs to be made about witnesses' testimony, that I think creates, in a sense, some of the problems we face as a hearing panel.

Most of the witnesses have appeared already, before a Grand Jury, have been deposed by the Office of Government Ethics in sworn testimony, have been deposed by Counsel for our Committee in sworn testimony, and some have already appeared before the Committee in sworn testimony.

One of the problems that emerges in that process is that witnesses become so trapped by their own statements that the fear of perjury and the advice of counsel of showing any willingness to modify a statement in light of whatever else comes along becomes difficult.

I would just make that observation as a general proposition. When a person has testified four or five or six times, I think in a sense we then limit the ability of people to recollect better or to respond to questions.

I make that as just a general observation.

Second, in response to Senator Gramm's question about the issue of whether or not Mr. Altman would have directed Ms. Hanson to meet with Mr. Nussbaum, or not, I appreciate your response.

I think it needs to be framed in the context in which the meeting on September 29th occurred at the White House. It has, I think, been stipulated, or should be stipulated, that that meeting at the White House was to meet on the Waco matter, and that it was at the end of that meeting at which Ms. Hanson talked to Mr. Nussbaum.

I think that is a different scenario than the notion of just going down specifically for the purpose, and the fact that someone, in the context of another meeting, might raise the question of their own volition. I think that takes on a different meaning.

I would quickly point out that there is a memo that was then sent on the 30th, the day after, in which one could certainly read into that memo that there was some direction. So I am not clear in my own mind as to it, but there is enough of an open question.

And I am not necessarily soliciting a response from you, but just for the purpose of the record.

What I would like to ask you, and I commend you for your testimony, and Senator Gramm has sort of alluded to this already in his question or comment to you and that is what ought we to do in this Committee legislatively. I am deeply concerned about the statutory requirements of how you fill the Chief Executive Officer of the Resolution Trust Corporation when a vacancy occurs.

Secretary BENTSEN. So am I.

Senator DODD. Now the law required that a confirmed individual assume that responsibility. As of the date when Mr. Casey left, the previous Administration's appointee, there were only two people who had been confirmed by the U.S. Senate that could have assumed that responsibility. One was yourself, as Secretary of the Treasury, and the other was Mr. Altman.

Secretary BENTSEN. That is correct.

Senator DODD. Now maybe some other Cabinet officer at Labor, but, I mean, I do not know of anyone who is suggesting that that job would go there.

Secretary BENTSEN. Right.

Senator DODD. So I wonder if you might share with us what should be done. I realize that it is right for you to indicate you would like to think about this, and I asked Mr. Altman yesterday and the Treasury might send some recommendations to this Committee.

One of the constructive things we might do is address that piece, I guess it was FIRREA, as to how we might modify the law and avoid the kind of inherent Catch-22 situation that led to a lot of the problems that have resulted in these hearings and the questions that have been raised.

I would ask you this morning if you might just comment generally on that particular legislative or statutory mess we have ourselves created.

Secretary BENTSEN. Let me do that, Senator.

Let me also supplement the answer to Senator Gramm insofar as those things taking place within the White House that involved answers on the RTC.

I had built a wall to be sure that I did not get involved in those things. The legal interpretation of the responsibility of the Chairman of the Oversight Board is that you not intervene in case specifics, and I wanted to be sure that that did not happen to me.

Now to get to your point, Senator, you are absolutely right. As we interpreted the law, it had to be someone who was a Presidential appointee who had been confirmed by the Senate. And logic was that you tried to use someone that had a background in finance, and there were only two of us in that capacity, that had been confirmed by the Senate. And that was myself and Deputy Secretary Altman.

He had a background in finance. He had a background in management. And I asked him to do that, to take that position.

No one really wanted that job.

Senator DODD. In fact, you could have left it vacant, I suppose, but I am not sure that would have been a responsible decision.

Secretary BENTSEN. Well I do not see how we—we had to have somebody over there in charge.

And so he took it.

And that was under the Vacancy Act.

And it really should be amended. I think both you and Senator Gramm have made the point that that should not happen again. I think you are right on that, and we will work on legislation we would recommend to you for your consideration to see it does not happen again.

Now we did get an amendment in there, as I recall, on the Resolution Trust legislation that provided for a deputy in that situation.

Senator DODD. That is correct.

The Chairman has informed me of this, and I think it is called for under the Completion Act of 1993.

Some of this may have been already addressed, and so I appreciate your response and I appreciate the Chairman's pointing that out that some of this has already apparently been addressed, but you made another point which I think also is worth noting.

There is a piece in The Washington Post this morning written by Lloyd Cutler entitled "A Heads Up History."

Mr. Chairman, I might just ask unanimous consent that that be included in the record.

[No response.]

The CHAIRMAN. Without objection, so ordered.

Senator DODD. Because I think the Secretary has pointed to another problem here that we have identified in a referral from the RTC in this matter, and that is at what point is a legitimate government function triggered that conversations between people of different agencies can talk to one another.

Today, we are discussing the Resolution Trust Corporation, the Treasury and the White House, but there are referrals made from, virtually every other Cabinet agency to the Justice Department. There are circumstances completely different from the ones we are talking about here that would need to have some sort of clarification as to how you draw that white line.

I think the Secretary's point on that is extremely worthwhile. That jurisdiction may go to the Judiciary Committee. I would hope that someone would make some recommendations on how that might be dealt with as well.

Secretary BENTSEN. Senator, that is right on the point and I had made it earlier, and you are amplifying it. That is particularly true for agencies that have some law enforcement responsibility.

Senator DODD. Correct, correct.

My time has expired.

The CHAIRMAN. Thank you.

Senator Bond.

Senator BOND. Thank you very much, Mr. Chairman.

Welcome, Mr. Secretary.

Secretary BENTSEN. Thank you.

Senator BOND. Just to follow up on a question that Senator Gramm was asking, I know it is very difficult to ask you to make decisions on the veracity of two of your top people.

We do have what appears to be an irreconcilable conflict and it is a difficult task for us.

But you have outlined to us today a very orderly procedure in which important matters are brought to your attention by means of a memo.

Would a discussion with a representative of the White House, like Mr. Nussbaum, by Counsel Jean Hanson from the Treasury or Treasury RTC, under your procedures have been recorded in a written memorandum?

Would you expect that kind of information to be put in the record?

Secretary BENTSEN. Not necessarily, particularly, Senator where there was nothing for me to do. There was no involvement by me.

Senator BOND. Mr. Secretary, you have made it clear in your opening statement and in answers to questions that you told Mr. Altman, prior to February 25, that the judgment was his as to whether he should recuse himself, and that you were in no position to make that decision.

The question we have is that Mr. Altman testified yesterday, without any hesitation, that you had recommended that he recuse himself.

Secretary BENTSEN. My understanding what he testified to was that he thought I said that if I was in his position, that I would recuse myself. Frankly, I do not remember saying that. I do know that I certainly sympathized with him, and he might have interpreted it to be that.

Senator BOND. Mr. Secretary, you were interviewed for the Treasury Department Inspector General's report on July 20th.

Two days after you were interviewed, on July 22, the extensive search which you had directed apparently turned up documents reflecting your schedule that your office had just become aware of.

Those documents reflect that you had a meeting with Roger Altman and Jean Hanson on February 1, the day before the now infamous February 2 White House meeting, but the schedule also reflects that you had a meeting with Mr. Altman and Ms. Hanson on February 3rd, the day after the White House meeting.

In your interview with the Inspector General, you recall the meeting on February 1st, and you recall discussing the statute of limitations in the Madison civil cases, but you did not recall being advised of the February 2nd meeting.

There were no documents at the time reflecting that there had been a meeting two days afterwards, a meeting on February 3rd.

With that information now available to you, thinking back when Roger Altman and Jean Hanson met with you on February 2, the day after—

Secretary BENTSEN. No, they met with me, I think, on February 1.

Is that correct?

Senator BOND. Well your notes from your office reflect that there was a meeting on February 3, as well. We have a copy of the redacted schedule which shows that there was a meeting on February 3.

[Pause.]

Pull that out. That shows that Mr. Altman and Ms. Hanson were on your schedule. Unfortunately, we are blessed with no shortage of paper work. This is the 1st, here is the 3rd.

If someone could hand this to the Secretary?

[Pause.]

This redacted schedule suggests that on Thursday, February 3, at 11:50, Roger Altman and Jean Hanson met with you.

Do you have any recollection, or does that freshen your memory as to what might have happened at that occasion?

Secretary BENTSEN. No, it does not, Senator. I have shown you something of my meetings, my schedules, and it does not.

Senator BOND. Thank you.

I can understand that meetings that long ago may not come quickly back to mind, even when you had a busy schedule.

But speaking of the Inspector General and the OGE report, there is something that concerned me.

Last night, we learned that Mr. Altman read and used the transcript of the IG's interview in preparation for his testimony, and also that Mr. Cutler had been presented copies, more than a week or so ago, of these IG reports.

Do you know why these transcripts were released to the witnesses before they were called to testify before this Committee?

Secretary BENTSEN. Yes, I certainly do.

In the sworn depositions that were sent to Mr. Cutler, he had asked for those to help him in his preparation before the Congress in his testimony. He had a very short time span in which to accomplish that.

And I thought that he deserved that to be able to do a good job of it, and that the Congress deserved that kind of information.

So it is also, let me state, someone here said that these things are a bit like a trial hearing. I am no trial lawyer so I am no authority in that regard.

But it is my understanding that once you have these sworn depositions, that they can then be exchanged and others can look at it, with the idea of giving the more complete facts as to what happened. It is not something that is kept in secret, it is not something that is sprung a surprise, a gotcha; it is more informational.

And that is what we were trying to do.

Now let me say, further, that I asked the IG about the propriety of it to be sure of that regard. And it was also my understanding that he thought he had completed his questioning of witnesses, and that after he had done this, that then the Office of Government Ethics then asked for one more witness to be deposed, and that was done. And that was the Comptroller of the Currency, Gene Ludwig. And that that did not impinge on the other witnesses' depositions.

Senator BOND. Mr. Chairman, my time is up. I thank the Secretary.

I was under the impression that the IG interviews were to be kept confidential until they were all released at once. Even though this is not a trial, we all know that if memories are shaky, or if in the instance where there is perhaps something that needs to be dealt with, having access to somebody else's testimony before you give your testimony may enable you to tailor the facts.

So that is a little troubling to me.

Secretary BENTSEN. Well then let me get into that further with you, Senator.

The other thing was, first I think Mr. Cutler is a man of integrity, an excellent lawyer. He served at least a Republican and a



Democratic President with distinction. I think he is an expert on the question of ethics.

But I also said to him, I want to be sure that this is not shared with the witnesses, that this is for your office and your staff. And he assured me that is the way it would be handled.

Senator BOND. But, Mr. Chairman, if I just may follow up. These were shared with Mr. Altman.

Secretary BENTSEN. That is right, after the completion of the report, afterward.

Senator BOND. Well, there is a question of whether it was before they were made public and before he testified.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Sasser.

Senator SARBANES. Well would the Senator yield to me?

Senator SASSER. Pleased to yield to Senator Sarbanes.

Senator SARBANES. I think it is important to clarify this.

As I understand, from what the Secretary has said, the depositions taken at the Treasury were made available to Mr. Cutler, who is doing a report, with the understanding that they would be held by him and his staff, and that other witnesses would not see those depositions.

That is what you have testified to?

Secretary BENTSEN. That is correct. Up to that point.

Now after the IG had completed his report and after this Committee had completed its depositions, then they were subject to being shared.

Senator SARBANES. That is right, and that is the next stage after the IG completed his report, then they were made more generally available.

Is that correct?

Secretary BENTSEN. That is correct.

Senator D'AMATO. Mr. Chairman, if I might make a point. I have to tell you, I understand sending the depositions over to Mr. Cutler. I think that is a closed question. But I think reasonable people could say, well you know he is conducting an investigation of his own, et cetera, so should he not have that information?

But I have to tell you, for him to release that information so that Mr. Ickes' deposition falls into the possession or into the hands of Mr. Altman before he is examined here, I think is inexcusable, and certainly a lapse of good judgment.

And that does not reflect on you, Mr. Secretary. I just think that falls into the area of making it possible to tailor testimony.

We are asking Mr.—and we only found out about this because we are asking Mr. Altman questions, and the next thing you know he says, oh, that is not what Mr. Ickes said.

How do you know that? Oh, I read his deposition. He's got his deposition there.

Secretary BENTSEN. Well let me say, the sharing of the depositions was only done insofar as witnesses after all depositions were taken, including that from this Committee.

Now the depositions for this Committee, because you requested it, as I understand, you have those, and I do not think those have been shared.

The CHAIRMAN. And they are held in a confidential status as between the witnesses until we actually use the material here in the Committee.

Secretary BENTSEN. That is my understanding.

The CHAIRMAN. Senator Sarbanes. Oh, Senator Sasser. Excuse me.

### OPENING COMMENTS OF SENATOR SASSER

Senator SASSER. Well thank you very much, Mr. Chairman.

Mr. Secretary, I want to welcome you this morning before the Committee. I know you are delighted to be here this morning. [Laughter.]

To be talking about this particular subject.

But as you are probably aware, the General Counsel of the Treasury Department, Jean Hanson, wrote a note saying that you had heard about the substance of the meetings that took place in the Autumn of 1993 dealing with the information regarding the criminal referrals.

Was she in error in that note?

Secretary BENTSEN. I certainly think she was.

Senator SASSER. Now in a handwritten answer that the same Ms. Hanson wrote to prepare you for your testimony before the House Appropriations Committee, Ms. Hanson apparently suggested that you would say, and I quote:

"I now believe that Ms. Hanson and Mr. Altman consulted with me \* \* \*" that is, consulted with you, "\* \* \*" in advance of the White House meeting of February 2nd, 1994, that was the subject of Mr. Altman's February 24 testimony."

Now did Ms. Hanson's suggestion accurately reflect your true belief that they did consult with you?

Secretary BENTSEN. Certainly not. I do not agree with that. I do not remember it that way at all.

Senator SASSER. Have you had communications about this whole Madison—

Senator BOXER. Mr. Chairman, could I ask Senator Sasser to repeat his question? I think it is important that the Chairman hear that.

Could you possibly repeat the question to the Treasury Secretary because I think that is a very important, crucial point.

Senator SASSER. Well I will be pleased to repeat it, Senator Boxer.

The question that I propounded to Secretary Bentsen was, Ms. Hanson gave him a handwritten note to prepare for his testimony before the House Appropriations Committee, and Ms. Hanson apparently suggested to Secretary Bentsen that he should say, and I quote:

"I now believe that Ms. Hanson and Mr. Altman consulted with me in advance of the White House meeting of February 2nd, 1994, that was the subject of Mr. Altman's February 24 testimony."

And I asked the Secretary did Ms. Hanson's suggestion accurately reflect the Secretary's true belief.

Secretary BENTSEN. That certainly does not reflect my memory of the situation. It does not. As I have said, they met with me on or about February 1 when Mr. Altman told me he was thinking of

recusing himself and they discussed the statute of limitations. However, to the extent that the answer you read suggests that they consulted with me about going to the White House, it is incorrect.

Senator SASSER. Now let me ask you——

Secretary BENTSEN. And at one point, I recall telling her that we had a difference of opinion concerning that issue.

Senator SASSER. Now let me ask you, have you had any communications with the President or First Lady about this whole Madison or Whitewater matter?

Secretary BENTSEN. No, I have not.

I know I was on a plane with the President flying some place and that was after all this was in the papers. And I recall how strange it seemed not to be able to discuss it, and neither of us brought any of this up to discuss with the other.

Senator SASSER. Right. So it was on your mind, but you knew——

Secretary BENTSEN. It sure was.

Senator SASSER [continuing]. You knew it would be improper to discuss it with the President?

Secretary BENTSEN. That is correct.

Senator SASSER. And the President did not bring it up to you at all?

Secretary BENTSEN. That is correct.

Senator SASSER. Nor has the First Lady?

Secretary BENTSEN. That is correct.

Senator SASSER. All right.

Now Mr. Secretary, according to an entry in Mr. Altman's diary, dated January 4, 1994, he says that you, and I quote: "went over to see George \* \* \*" That is George Stephanopoulos "\* \* \*" on Whitewater yesterday to argue for lancing the boil." He says "to argue for lancing the boil."

Did such a meeting take place?

Secretary BENTSEN. Yes, such a meeting took place.

Senator SASSER. Tell us what happened in that meeting?

Secretary BENTSEN. Well I called George Stephanopoulos and that was at the time when charges were being made that there was stonewalling taking place by the White House, that there was not disclosure. And I went over to talk to him and tell him that whatever the facts were, get it out there. Make a total disclosure.

That I had been through one of these deals where I formed a breakfast club one time where I was going to get contributors together for my campaign and have breakfast with them from time to time. Frankly, I tried to take some of the ideas out of the Democratic leadership, the club, and out of I think the Republican's Eagles Club.

But I no sooner did it than I decided I had made a mistake. And so I immediately disbanded it, and held a press conference and said that I did not think I made many mistakes, but I did on this one and I thought it was a real doozy.

And that was the end of it.

Senator SASSER. How did George Stephanopoulos respond to that?

Secretary BENTSEN. As I recall, he shared that as something that should be done.

Senator SASSER. Mr. Chairman, I know my time's not expired, but——

The CHAIRMAN. Why don't we reserve the remainder of Senator Sasser's time. We have got to recess. We have got a vote underway. Let's reserve your time, Senator Sasser, and you can take it either right when we come back, or at some other convenient point.

Senator SASSER. Thank you, Mr. Chairman.

The CHAIRMAN. The Committee stands in recess for about 10 minutes.

[Recess.]

The CHAIRMAN. The Committee will resume.

I want to say for the record that Senator Sasser was in the middle of his time period—well he has just returned.

Let me just give Senator Sasser a minute to get seated and get his materials ready. If the timing clerk would restore the remainder of Senator Sasser's time after he has caught his breath here, we will go ahead and finish with Senator Sasser and then we will rotate over to the Republican side.

Senator Sasser.

Senator SASSER. Thank you, Mr. Chairman.

Mr. Secretary, I am fascinated by the statement that you made to George Stephanopoulos arguing in favor of "lancing this boil."

Some of the things you learn just by living, and I think sometimes if you are a smart person and have an open mind you will acquire wisdom over the years. This may have been a very wise suggestion that you made to George Stephanopoulos. I think it was.

But my question comes: How would you lance this boil?

I was talking to a very prominent constituent of mine last evening who unfortunately for him is a C-SPAN junkie. He watches everything we do on television here, and he was making the point. He says, this reminds me of "The Dance of the Seven Veils." After the last—the veils are taken off one after another, and finally to our chagrin we find when the last veil falls there is nothing there.

Now my question to you is: How do you lance this boil here that has been pestering this White House, and has been in and out of the news now for 2 years?

Secretary BENTSEN. Well I think one of the things the White House did in responding, and properly so, was the Special Counsel to get at this, to see what the facts were, and to move on that one.

Then, frankly, what I did on March 3rd, when I immediately reacted by calling for the Office of Government Ethics to take over and find out exactly what had happened in this regard.

Senator SASSER. And we got the ruling from the Office of Government Ethics I think yesterday, or perhaps the day before yesterday.

Secretary BENTSEN. That is correct, we did, saying that there was no violation of any ethical standard.

Senator SASSER. Now with regard to the meeting that took place in the latter part of September, dealing with the question of the criminal referrals, have you read the referrals that were the alleged subject of these discussions?

Secretary BENTSEN. No, I have not.

Senator SASSER. And have you read any of the papers on which these referrals were based, that is, the substantive papers?

Secretary BENTSEN. No, I have not.

Senator SASSER. Now the White House, in the first months, issued a general memorandum, in which they were banning contacts between officials there and those in regulatory or investigatory agencies on specific subjects without the approval by the White House Counsel's Office, and then they would approve them only under certain circumstances.

Are you aware of this memorandum?

Secretary BENTSEN. Yes, I heard about the memorandum. I have not read the memorandum. I do not have any intimate knowledge of it.

Senator SASSER. Well do you think this procedure is sufficient in banning contacts between White House officials and those in regulatory and investigatory agencies on specific subjects?

Secretary BENTSEN. Well I have not seen the detail of it, but I can say that I also advised Treasury officials that not have any contact on these issues with the White House.

Senator SASSER. My time has expired.

Thank you, Mr. Secretary.

The CHAIRMAN. Thank you, Senator Sasser.

Senator Mack.

#### OPENING COMMENTS OF SENATOR MACK

Senator MACK. Thank you, Mr. Chairman.

And welcome, Mr. Secretary.

Secretary BENTSEN. Thank you, Senator.

Senator MACK. I want to begin by focusing on something that struck me the other day when we were discussing some matters with Mr. Roelle. One of the things that came up was that even at that time, which is just a couple of days ago, he would not share with the Committee, or he would not turn over to the Committee, the cover page of the 9 referrals.

He felt that it was very important, from the RTC's perspective, and from his perspective, that the referrals that remain a confidential matter that should not be shared with anyone.

And he has been pretty clear about that all the way through his testimony, from the 1st time I asked him questions about calling Mr. Altman back in September.

He feels very, very strongly that this is not information that should be shared.

But yet, either Mr. Altman or Ms. Hanson, or a combination of the two, shared this information with the White House, through Mr. Nussbaum.

I am just curious as to how you think it should have been handled.

I mean, I heard someone say the other day, you know I am not sure I know all these rules about ethics, but I sure know right from wrong.

I would like to have your sense about what has happened, the sharing of these referrals with the White House back in September.

Secretary BENTSEN. I think what you have, Senator, in this, you do not have as clear guidance as you should have, particularly if you are talking about nonpublic information, and that is what you are speaking of.

I know there are instances where the White House should know and a law enforcement agency, as we have in Treasury, or some of these other departments have, really ought to be able to communicate with the White House.

But there is no clear line there. I can think of—I am not sure that you were here at that point, Senator, but I can think of situations where the White House should know.

I think about the possibility of some foreign dignitary that gets involved in a dope——

Senator MACK. I was here when you made that comment. In fact, that is what triggered the question.

Secretary BENTSEN. OK.

Senator MACK. And let me again maybe just add a couple of more points to it. I do not have any disagreement with that.

But I think that what is troubling me, is again, should the White House have knowledge that there may be something coming up that they are going to have to deal with?

I mean, for example, would it have been OK for them to have learned that it appears that there will be some referrals that will go to Justice, but not the details of those referrals?

I think, you know again——

Secretary BENTSEN. Yes, I think there are cases where they should have the details of those referrals.

Senator MACK. Before or after it becomes public knowledge?

Secretary BENTSEN. Before it becomes public knowledge.

Senator MACK. Before?

Secretary BENTSEN. Let me give you an example.

Let's suppose that you have someone, some foreign dignitary that is involved in dope running, and that is not publicly known.

Senator MACK. Mr. Secretary, I am really trying to get you to respond, though, to this, the area of these 9 criminal referrals, not——

Secretary BENTSEN. Oh. I do not know the details of those 9 criminal referrals.

Senator MACK. No. The point is should the details of the 9 criminal referrals been made available to the White House before they were public knowledge?

Secretary BENTSEN. I do not think that they have clear guidance on that. And I think that is part of the problem.

Senator MACK. Well then give me your instincts. I mean, what we are talking about is just kind of basic——

Secretary BENTSEN. I do not want to deal in instincts. I think you try to understand the guidelines and respond to those.

But the problem, there is not a clear, bright line, and that has to be done. And that is where I want your Counsel of this Committee, and I want that of the Attorney General and the Office of Government Ethics.

Senator MACK. Let me move on then to another point, because I think it might lead into that.

The Office of Government Ethics' report does not address all the conflicts between Mr. Altman's testimony and those of the White House and Treasury officials.

And I believe, in a sense, it throws it back into your lap.

In part of the analysis, it says, on the basis of our review, we believe that "you might reasonably conclude that the conduct detailed in the report of the officials presently employed by the Department of the Treasury did not violate any standards of conduct, of ethical conduct for employees of the Executive Branch. However, many of the contacts detailed in the report are troubling."

And I wonder if you would just share with us how you are going to follow this up?

What are you going to do about this?

Secretary BENTSEN. Well I think they are right on that. And I think there are things that we have to do. And I assume full responsibility as Secretary of the Treasury.

I think, to have clear, distinct understanding when a person is wearing two hats, one is in this instance, Deputy Secretary of the Treasury, and on the other hand, Chief Executive for the Resolution Trust, and you have different sets of rules and regulations in the two.

Senator MACK. What would the rules of the Treasury have been under this circumstance?

Secretary BENTSEN. Well you get into quite a plethora of rules insofar as responsibilities in the Treasury. I do not think I can give you the detail of it. I would be delighted to respond to it subsequently in the record, if you would like.

Senator MACK. I think it would be helpful if——

Secretary BENTSEN. I would be happy to.

Senator MACK [continuing]. If we could have some identification of what the rules of the Treasury would have provided with respect to this issue.

Secretary BENTSEN. I would be happy to.

The rules on when Treasury officials can discuss or confirm the details of a criminal referral are far from clear. That is why I have asked the Justice Department, OGE, and Treasury's own Inspector General to work with the Department in developing guidelines.

Senator MACK. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Shelby.

Senator SHELBY. Thank you, Mr. Chairman.

Senator Bentsen, Senator Bentsen, I will always call him that, I guess. Mr. Secretary, we are glad to have you over here with us again.

I would like to go back into a couple of things that have been disturbing to me and I think some others on the Committee.

Let's talk about, for a minute, and see if I understand, that the Office of Inspector General's report here, this is the Inspector General of the Department of Treasury, is that correct?

Secretary BENTSEN. That is correct.

Senator SHELBY. This investigation I believe at your request or your——

Secretary BENTSEN. For the Office of Government Ethics, that was my request, and then, but they have no investigative——

Senator SHELBY. Let's go over it again.

Secretary BENTSEN. But let me make the point and answer your question.

But they have no investigative powers, so they called on the Inspector General for that purpose.

Senator SHELBY. OK. In other words, the Inspector General was doing the investigation, part of it? You said he had to investigate—

Secretary BENTSEN. Doing the investigation and, based on that, the Office of Government Ethics. But the Office of Government Ethics points out those areas that they think are important in arriving at a judgment, and directs the IG.

Senator SHELBY. Let me go over the sequence of events again briefly with you here.

When was this report finished and disseminated to the public?

Secretary BENTSEN. Well I think it was this—I do not have the exact date, but it has been in the very last few days. And what I did with that was to release it to the public, and I believe I am correct on this, and as I understand it, the White House came over and picked up a copy at that press conference.

Senator SHELBY. Did you release some of the documents to the White House before you released it to the public?

Secretary BENTSEN. I released to the White House sworn depositions that had been requested by Mr. Cutler, and Mr. Cutler had the authority to come over and interview the witnesses, but yet a time constraint here in trying to get ready to testify before the Congress. And the IG had felt that the White House had been very cooperative in responding to their deposing of witnesses there, and in turn, they felt that they should cooperate to give Mr. Cutler the kind of information he needed to prepare.

Now I put a safeguard on that.

Senator SHELBY. What was the safeguard?

Secretary BENTSEN. As I said, first, I think Mr. Cutler is an excellent attorney, a man of integrity, who has an understanding of ethics and has served, with distinction, two Presidents, and I said, I want these depositions limited to your staff and not shared with the witnesses until this situation is further developed, and the reports, all of the reports are completed.

Senator SHELBY. Were these depositions shared with Mr. Altman?

Secretary BENTSEN. They were not shared with him until after, my understanding, all of the witnesses had been deposed.

Senator SHELBY. But they were shared prior to his testimony yesterday, were they not?

Secretary BENTSEN. Well I would assume so.

Senator SHELBY. OK.

Secretary BENTSEN. The point is, I have forgotten your experience as a trial attorney, if you were. I have never been, but my understanding is that this is comparable to a trial. And my understanding is these depositions are not something that are then held in secret but they are shared.

Senator SHELBY. Swapped.

Secretary BENTSEN. And that is not something like sprung on them as a surprise. Gotcha, for example.

Let me further state that this Committee asked me to share with them the deposing of our witnesses and that these sworn depositions then come back to this Committee.



I do not think the law requires that of me.

But I did that because I want to comply and I want to cooperate with this Committee. And as I understand it, this Committee still has those and has them under lock and key.

Senator SHELBY. Mr. Secretary, do you recall when Mr. Cutler requested these depositions?

Secretary BENTSEN. No, I do not recall. I would be happy to get you the date.

Senator SHELBY. Would you furnish that for the record?

Secretary BENTSEN. I would be happy to.

Senator SHELBY. I want to now go to the diary or parts of the diary of Mr. Steiner, who is your Chief of Staff, and get back into something that is been asked many times, and that is the recusal of Roger Altman.

Did you ever recommend to Roger Altman that he should recuse himself?

Secretary BENTSEN. I do not recall that I did, but I must tell you, Senator, I was very sympathetic to him, because I thought he was in a tough spot, and he well might have interpreted that.

I do know that I emphasized over and over that the decision had to be his, that he knew the facts, that I did not.

Senator SHELBY. Was he in a tough spot because of the wearing of two hats? I mean, it was inevitable?

Secretary BENTSEN. What?

Senator SHELBY. Was he in a tough spot because of the wearing of two hats, or was he in a tough spot because of the wearing of two hats plus the connections to the White House?

Secretary BENTSEN. Well I think that he was in a tough spot because the question, he was being charged by some Members of Congress, of having a conflict there that had to be resolved.

On the other hand, there was a decision to be made, and whether or not to recuse himself was, from his standpoint, a difficult call.

I must say that when he did recuse himself, I was quite relieved, and I might say further that if I had known all the facts that I now hear, I would have certainly recused myself.

Senator SHELBY. Secretary Bentsen, did you ever have a conversation that you recall in bits or pieces or in whole, where Mr. Altman talked with you about the problem of recusal?

Secretary BENTSEN. Oh, yes.

Senator SHELBY. He talked with you about it?

Secretary BENTSEN. Yes, he did.

Senator SHELBY. But you do not recall whether you recommended at that time that he recuse—

Secretary BENTSEN. I do not recall recommending him to do it. But once again, I very much sympathized with his problem, and he might have interpreted it that way.

Senator SHELBY. Could you have recommended it to him and not recalled today?

Secretary BENTSEN. I do not have total recall, and I do not really know anyone that does.

Senator SHELBY. So the answer is, you do not know whether you recommended that he recuse himself or not?

Secretary BENTSEN. I told you I do not recall that.

Senator SHELBY. You just remembered a conversation regarding this?

Secretary BENTSEN. Yes.

Senator SHELBY. Are you familiar—

The CHAIRMAN. Senator Shelby, excuse me, your time has run, and I do not want to cut you off.

Senator SHELBY. I am sorry. I did not know my time was up.

The CHAIRMAN. Excuse me.

Senator Faircloth.

### OPENING COMMENTS OF SENATOR FAIRCLOTH

Senator FAIRCLOTH. Thank you, Mr. Chairman.

I would like to yield one minute of my time to Senator Mack, and then I have some brief questions.

Senator MACK. Mr. Secretary, I kind of diverted you off into another direction after I asked you a question, and it had to do with, what are you going to do as an administrative matter to resolve the conflicts between Mr. Altman's testimony and that of many other officials.

There are lots of people who are saying different things, which you are well aware of, and I was interested in how are you going to proceed with that as an administrative matter in solving those problems?

Secretary BENTSEN. Well I am going to try to get better lines drawn insofar as what can and what cannot be done, what authority is in each of these two different institutions, Treasury and the Resolution Trust.

I think that the Office of Government Ethics makes some good points in that regard, and what I get is a feeling in the Senate Committee that those things should be done.

Senator MACK. I guess what I was really referring to in dealing with the specific issue, though, of the very different opinions and recollections of Mr. Altman, Ms. Hanson, Mr. Steiner, and Mr. Roelle?

Secretary BENTSEN. Well let me say, Senator, if the question is, you know how do you get them to work together and the rest of it, and I look at you folks here and I think of my own time in the Senate, and I think of the times I was on the Senate Floor arguing with one or the other of you on the different side of an issue and really going at it, and the next day, we would find we were on the same side of a different issue.

So I think they will be able to work together.

Senator MACK. Well Mr. Secretary, I have a different point of view. I do not have any more time to pursue it at this time.

Senator FAIRCLOTH. Thank you, Mr. Secretary, for being with us this morning. And I have a few brief questions and not really concerning you.

But my concern is the lack of aggressiveness on the part of Mr. Fiske that I feel in pursuing the Whitewater and his many, multiple ties to the various members of the Administration.

I feel very strongly that he maybe represents more the problem than the solution to clearing up the Whitewater problem and getting to the bottom of it.

And that is what I feel, and so I had one or two questions concerning him.

Had you ever met Robert Fiske prior to his appointment by Ms. Reno as Special Counsel?

Secretary BENTSEN. Not to my knowledge.

You know I am like you. I have met an awful lot of folks. But I do not ever remember having met him, and if I did, I apologize to him.

Senator FAIRCLOTH. Are you aware that, you know of course you do know that Ms. Reno is the person that appointed him as a Special Counsel?

Secretary BENTSEN. That is right.

Senator FAIRCLOTH. Are you aware that Bernard Nussbaum recommended Mr. Fiske for a job with the Iran-Contra prosecutor, Lawrence Walsh?

Secretary BENTSEN. No, I am not aware of that.

I do know that various Members of this Committee and on both sides of the aisle, made some very commendatory statements about Mr. Fiske at the time he was chosen, and I understand he is a Republican.

Senator FAIRCLOTH. I am aware of that too, and I thought more highly of him before he started the investigation than I do after he has been in it awhile.

Are you aware that the Robert Fiske law firm represented the company that sold the land to the Whitewater Partnership?

Secretary BENTSEN. That what?

Senator FAIRCLOTH. That the Robert Fiske law firm represented the company that sold the land to Whitewater Partnership?

Secretary BENTSEN. No, no. I do not know that, did not know that.

Senator FAIRCLOTH. Were you aware that Nussbaum served on the same side of at least two legal cases with Robert Fiske?

Secretary BENTSEN. No, I do not know that.

Senator FAIRCLOTH. Were you aware that Nussbaum consulted with Robert Fiske on at least two high level appointments to the Clinton Administration?

Secretary BENTSEN. No, I did not know that.

Senator FAIRCLOTH. Were you aware that Robert Fiske worked with Robert Bennett, President Clinton's current lawyer on his Paula Jones problems, in a case involving the First American and BCCI? That they worked together, Bennett and Fiske?

Secretary BENTSEN. Senator, you know a lot more about that than I do.

Senator SARBANES. Mr. Chairman, there is no reason why the Secretary should be aware of these things. I know Senator Faircloth wants to put it in the record, and he maybe should go ahead and read it, but I do not know why he should keep dragging the Secretary, I mean, the Secretary had nothing to do with picking—

Senator FAIRCLOTH. Senator Sarbanes, if I need you to critique my questions, I will ask you to.

Secretary Bentsen, this morning on the CBS morning news, Senator Bob Dole said that after watching the hearings yesterday, two things were obvious.

First, somebody is not telling the truth.

And second, it is obvious that Robert Fiske did not do a very thorough job.

Secretary Bentsen, did Robert Fiske talk with you specifically about the accuracy of Robert Altman's testimony at the January 24th RTC Oversight Hearings?

Secretary BENTSEN. No, he did not.

Senator FAIRCLOTH. So Robert Fiske did not talk with you about the discrepancies between the number of White House RTC contacts that he found and the number that Robert Altman reported at the hearing?

Secretary BENTSEN. No, he did not.

Senator FAIRCLOTH. Do you know of any evidence that Robert Fiske investigated to determine whether Roger Altman withheld information from Congress?

Secretary BENTSEN. Senator Faircloth, I do not have that detailed information.

Senator FAIRCLOTH. So the point being, so when Robert Fiske said evidence does not justify criminal prosecution of any Federal statute, have no reason to believe that he even investigated the possibility of criminal withholding information from Congress.

So if he did not talk to you, he did not.

That is all.

I yield the rest of my time.

The CHAIRMAN. Thank you.

What I am going to do also, I have had a couple of Members ask me, unrelated to you, Senator Faircloth, it would be helpful to them because they get absorbed in a line of questioning, and they do not see the timing clock.

If they could receive a note from a staff member as their time has expired, so they will know that so they can then stop in an orderly way themselves, rather than have to be interrupted, and I would prefer that as well.

So we will endeavor to do that and pass a note to Members as the clock expires so they know that and that they can manage the time accordingly.

Senator Kerry.

#### OPENING COMMENTS OF SENATOR KERRY

Senator KERRY. Thank you very much, Mr. Chairman.

Mr. Secretary, welcome, and thank you for taking time to be with us.

What was the date that the freeze was put into place when you began to collect——

Secretary BENTSEN. What?

Senator KERRY. What was the date that you began to collect the information, a freeze on computers and documents was put in place? Do you recall approximately when that was?

Secretary BENTSEN. I would say it was in March. I cannot give you the exact date.

Senator KERRY. Early March, I think.

I just wanted to take a moment to commend you for that. I think that our colleagues and the country ought to be aware of the meas-

ure, the full measure of compliance that has taken place here, even the safeguarding of documents.

The reason we have a Josh Steiner diary, the reason we have these contradictory documents from people is because you saw your duty and understood that this was serious and that the Treasury Department was going to be beyond reproach with respect to that.

I might say it is in direct contrast to prior experience up here. I think you and the Department are to be commended for that, and the Administration is to be commended.

Last night, we received a document that had been previously redacted. The White House gave it to us. Pages of document outside of the scope but they unredacted it and made it available. I just want to commend you for it.

Secretary BENTSEN. Thank you, sir.

Senator KERRY. I want to ask you a few questions if I can in a couple of areas that I think are very important to the Committee, as we try to struggle to reconcile different recollections here and testimony. I also want to try to understand the standards we are dealing with.

You and others have cited the report to you from the Office of Government Ethics and appropriately, you in your opening said, from this report, that there are many contacts that are troubling. You did not gloss over that, you mentioned it.

There are also citations about problems between Treasury and RTC and you have mentioned those today.

What still disturbs me is, I think it is a good report as far as it goes. I have read the analysis, I agree with most of the analysis, but it is a very strictly legal document, making judgments about the specific worst case scenarios of the Federal law as they apply.

Let me give you an example.

One of the areas they examined was the principle that employees shall act impartially and not give preferential treatment to any private organization or individual.

I would assume you would agree that an employee of the Treasury Department should act impartially and not give preferential treatment to any public organization or individual where that individual might be affected by actions.

Secretary BENTSEN. I think when you get into a situation that I cited earlier with the White House where, under certain conditions, it would be quite proper to give non-public information in order that their responsibilities can be discharged.

But I do not think the lines are clear enough on that. And I think the Office of Government Ethics makes a good point on that, and I think we ought to do a better job in defining that.

And I think that is true not just for the law enforcement at Treasury, but also for every other Department.

Senator KERRY. The reason I ask it, Mr. Secretary is that at a later page of the report, page 10, it says, as a final note on the appearance issue, we should add that we recognize that having a public purpose for a disclosure does not preclude an employee from also having, as a purpose, the furtherance of a private interest.

And as to Ms. Hanson, they found that she did not do anything with respect to a private interest.

But they also say in this report that it is unclear from the report what Mr. Altman's role in the disclosure of September 29th may have been.

And here we go to his memory about Ms. Hanson, and they specifically say that Ms. Hanson's memorandum—excuse me—we feel there is insufficient information to enable us to provide you with any further analysis of Mr. Altman's participation in this disclosure.

Now that is why a very essential question for us here is Mr. Altman's relationship to Ms. Hanson, and Ms. Hanson's visit to the White House.

And I just want to come back to it for a moment, if I can, so that we can analyze this other part of the report.

You have talked earlier in your testimony about your office and the way you ran it. I recollect that you run a very tight ship, and I respect that. I think we all do.

It is hard for me to imagine that your lawyer, the Counsel to the Treasury, would spontaneously contact the White House without some authorization from somebody or some notice to somebody, that she would just take it upon herself to go to the White House with a very unusual happening, a reference of a criminal referral mentioning the name of the President or Mrs. Clinton as a possible witness.

I want to emphasize that. The word keeps getting thrown around here, criminal referral. Witness. And most Americans are not drawing that distinction.

Can you help us with that, because we have really got to make some choice up here.

Would she have gone, I mean, was she authorized, I do not want to ask your opinion, but was she authorized to contact the White House on her own in that kind of a situation?

Secretary BENTSEN. Let me state that I have a better understanding of it just from what I have heard here this morning, because my understanding, I believe as Senator Dodd testified, that she went over for some other reason. And she was at the White House, and the occasion came up where she decided she could divulge that.

Now that is what I was told. I did not know that before, and that makes it more easily understood.

Senator KERRY. The evidence before the Committee, Mr. Secretary, is that she was directed. Well, there is conflicting evidence, but several people have indicated she was directed to call. She telephoned. The telephone logs indeed show that there was a call. They did not connect. And then she happened to be there a subsequent day and took advantage of that to relay the information she had intended to relay in the telephone call.

But that she states she was doing this upon the specific instruction of Mr. Altman.

Now the Committee's got to wrestle with this question. Would the lawyer for the Treasury have taken upon herself, this independent, or was she authorized to do this, or was this an unauthorized contact?

Secretary BENTSEN. Let me say, Senator, that top officials in Treasury were often, often at the White House working with staff

at the White House and developed a relationship there. That it was not unusual for them to be there.

I do not know any prohibition that would have been in place for her not to have done that.

The CHAIRMAN. Senator Kerry, if you want to pursue that, I will yield you 2 minutes off my next round. Senator D'Amato's in agreement with doing that if you want to take a couple of minutes to finish this line of discussion.

Senator KERRY. I have a couple of questions that are tied into that line of questioning. I hope you understand.

Secretary BENTSEN. I know what you are reaching for.

Senator KERRY. I am just trying to understand how the lawyer for the Department would take. Clearly a reference in a criminal referral in any capacity is an unusual occurrence.

Is that not fair to say?

Secretary BENTSEN. Yes, I would certainly think so.

Senator KERRY. Would you not want to be informed if your Department is being notified to this effect?

In fact, the evidence says that according to Mr. Roelle, that she was instructed to call, among other people, you or your office to inform you.

Secretary BENTSEN. I had worked very hard to build a wall around myself insofar as any case specific matter in the Resolution Trust. I did that because I did not want, in any way, to have violated the law.

And that worked.

Senator KERRY. I am not suggesting that you had any role in this. I know you did not. There is nothing that suggests you did. I understand that.

All I am trying to say is, Mr. Secretary, the notion that if I am lawyer to somebody and information comes to me of the import of this kind of information, the notion that I would take it upon myself to just jump over to the White House, talk to the Counsel of the President of the United States and say to him, hey, by the way, is very hard for me to accept.

Secretary BENTSEN. Let me tell you, Senator, you are more awe inspired than I am by those folks over there.

Senator KERRY. I beg your pardon? I could not hear—

Secretary BENTSEN. You are more awe inspired than I am by those folks over there. Those folks are over there daily.

Senator KERRY. That may well be. We do not get down there as often as you do.

Secretary BENTSEN. Those folks were over there daily.

Senator KERRY. This is what I want to understand. I am not arguing with you about it.

You are saying to me that Ms. Hanson might have gone over there absolutely on her own on a daily basis with this kind of information?

Secretary BENTSEN. Well she was over there often. No, not daily on that kind of information, but they were over there very often, and developed a working relationship there.

Senator KERRY. But she was over there at the time on Waco, correct?

Secretary BENTSEN. That is what I found out this morning.

Senator KERRY. Clearly, we know she was over there.

Would she impart that kind of information without having first told you or Mr. Altman?

Secretary BENTSEN. She certainly would without telling—would have done it, and could have done it without telling me, certainly, because once again, I was very much opposed to anything that got me in case specific matters in the Resolution Trust because the Congress has made it clear that I was not supposed to be in the oversight.

Senator KERRY. Absolutely, I agree with that.

And then the question would be whether or not, in your judgment, it would have been appropriate for her to go to the White House without having first checked with Mr. Altman?

Secretary BENTSEN. I do not think she is precluded from that.

Senator KERRY. Thank you.

The CHAIRMAN. Senator Bennett.

#### OPENING COMMENTS OF SENATOR BENNETT

Senator BENNETT. Thank you, Mr. Chairman.

And welcome, Mr. Secretary.

Secretary BENTSEN. Thank you, Senator.

Senator BENNETT. I will just make a quick comment.

I may be the only Member of this Committee who has served in an Administration, and yes, we were at the White House on a regular basis and yes, at my level, and it was functioning at an Assistant Secretary level.

I would clearly not have talked to the Counsel of the President without the Under Secretary, as he was then designated, telling me it was OK. I would have talked to my normal contacts, but the Counsel of the President to an Assistant Secretary, which is the level at which she operates, is kind of a forbidding figure and she testified, very specifically, I do not know Bernie Nussbaum, and I would not presume to call Bernie Nussbaum unless somebody told me.

So that has been her testimony, and I happen to resonate with that.

Now Mr. Secretary, in your testimony, you asked us for recommendations that we might think appropriate, and I have one for you.

I would suggest that you send the name of Jack Ryan to this Committee for confirmation immediately. We have had testimony here that he will now preside over the RTC until its dissolution.

If that is the case, even if its dissolution is only three months away, let's get him confirmed by the Senate, and then in the process get him the instructions to guarantee that there will be separation between the RTC and the Treasury.

Because we have had testimony here—

Secretary BENTSEN. Senator, I think that is a good idea. And let me see if I can get that done.

You know I have tried for a long time to get somebody in that job and was not able to do it.

Senator BENNETT. Well you have somebody in that job. Send him up, and then if you talk Mr. Simons or whoever into taking it later



on, he can always resign, but let's get somebody who is doing the job confirmed and let's do it as quickly as we can.

Now Mr. Secretary, I have not had an opportunity to review the report of the Office of Government Ethics until this morning.

And I must say to you, I appreciate the way you deal with this in your testimony because you say, right up front, that the report was troubled by some of the contacts, and then you lay out those areas of trouble.

One of the things we have constantly heard from Mr. Altman was "the OGE cleared it." Well the OGE says there is nothing wrong. No, the OGE says I am OK. We got that flavor again and again.

And now that I have the report and can read it, I realize that there are a number of areas that the OGE says need work. And I am struck by the statements on their cover letter.

They say to you, the Office of Government Ethics is not an investigative agency. And then it goes on and says, it is of course your responsibility to make any necessary determinations.

This is a report to you of what they found, but it is laced with statements like, you could conclude, you should examine, you do this, you do that, and so on.

And the fact that you have highlighted, in your testimony, that the OGE says there is a possible lack of appreciation of the difference between a Treasury function and the one belonging to the RTC, and what rules apply, there is a misconception about the standard on the use of public information, a misconception on the function of recusal.

I am quoting, not from the report, but from your testimony——  
Secretary BENTSEN. That is correct.

Senator BENNETT [continuing]. To emphasize how grateful I am to you that you are willing to be up front about the fact that there needs to be some things done.

Just as an editorial comment, I had had this before. Let me get the right page here so I quote it exactly. I am just kind of amused by the OGE's comment.

While we would never find fault with an individual sensitivity to conflict or appearances of conflicts, Mr. Altman's actions in this regard are somewhat confusing.

I find that a bit of an understatement, but I am delighted to have that.

So might I suggest to you that your guiding star should be to go through this report, make as strong a series of changes as you possibly can, but as I say, your guiding star should be the separation between the RTC and the Treasury Department, because we have had testimony here under oath saying that the RTC has been politicized more heavily under these circumstances in this Administration than at any other time.

Now you may disagree with that characterization, and I'm sure that that is——

Secretary BENTSEN. I do. I do.

Senator BENNETT [continuing]. That is possible, but at least it exists. It has been testified to by Mr. Katsanos. Mr. Roelle's testimony, to me, seemed to corroborate that. The perception is strongly there.

And if you want recommendations from this Committee, my recommendation would be, do whatever you can to see that that perception is erased.

Secretary BENTSEN. I appreciate that.

Let me say to you, Senator, I have spent approximately 30 years in public service, and my reputation is something I treasure.

The first meeting I had of the top officials in Treasury was on ethics. And that was, as I recall, I think it was the day after I was sworn in. And I called them together, and I had the top career ethics attorney present to us what could and what could not be done, and what our responsibilities were on ethics.

Let me say that in all the years I was in the Senate, I never accepted, for me, an honorarium, not once. I can remember Dale Bumpers talking about coming up to my office, because I had a management consulting firm work on the organization of my office.

And I think we had a reputation for having an efficient one. And he said, he was interested if the telephone operator was taking down and checking calls to see which of them were my personal calls, so I could reimburse for them.

So I have worked at that one, and that is why I made it the first meeting that we had in Treasury.

Time and time again, I consult with the ethics office in Treasury, can we do this, or cannot we do this.

And I appreciate your counsel.

Senator BENNETT. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Bryan.

#### OPENING COMMENTS OF SENATOR BRYAN

Senator BRYAN. Thank you very much, Mr. Chairman.

Mr. Secretary, welcome. It is nice to have you with us this morning. I must say that I wish we were discussing some other issues, because under your leadership the Department of Treasury has been most, most helpful in dealing with some of the regulatory paperwork burdens on the CTRs in terms of our credit crunch and the situation we have in my own State in dealing with 6(a), and I think that that is a result of your leadership.

I want to acknowledge that publicly and commend you for what I consider a very refreshing approach in dealing with a number of these issues.

Secretary BENTSEN. Thank you.

Senator BRYAN. I want to ask you a question about a structure, if I may, first.

Without going into all of the things that occurred and some of the contacts which are troubling for us all, I think those of us on this Committee that worked on the FIRREA legislation back in 1989 had an understanding that we were being much more clear than in fact the law is in establishing a separation in terms of the independence of the operation of the RTC and the Treasury.

Mr. Ryan has commented, for example, that when he first came aboard that he was—I do not think “surprised” was his word, but that was the import of it, that the lines of authority are less clear.

My question, Mr. Secretary, is prospective, not retrospective. That is, have you undertaken the establishment of any guidelines to make sure that that separation that you have testified to and

that I think is so important, that there are some guidelines that are clear in terms of the contact between Treasury and the RTC as these cases may be developed and processed?

Secretary BENTSEN. I have had them call the Attorney General's Office to tell them that we are going to ask for their guidance and their advice and their counsel.

I will do the same thing with the Office of Government Ethics. I will do that with the Inspector General. And such counsel as you have for us, we will be happy to have.

Then, we will be working to have better guidelines and more clarity in that regard.

Senator BRYAN. I would like——

Secretary BENTSEN. Now let me further state that one of the big problems was having the Deputy Secretary having to serve as the Chief Executive of the RTC at the same time.

Now that will not be the case anymore. But somebody else made the point about the Vacancy Act. I think we should do some things there, too, to further assure that this or other agencies do not have that kind of a problem.

Senator BRYAN. And I have acknowledged in my opening statement, as well as in my discussion yesterday with Mr. Altman, that I do think that he was placed in an untenable position because of the inherent responsibilities both of those positions involved. That is unique. It will not occur again, I am sure.

That is in no way meant to indicate that I do not have some serious problems with some of the things, and contacts, and statements that were made.

Mr. Secretary, let me ask you this question:

The report sent to you from the Office of Government Ethics makes this statement:

On the basis of our review, we believe that you might—referring to “you” as the Secretary to whom this report is addressed—that you might reasonably conclude that the conduct detailed in the report of officials presently employed by the Department of Treasury did not violate the standards of ethical conduct for employees of the Executive Branch.

My question to you, Mr. Secretary, is:

Have you yourself reached a conclusion?

If so, would you share it with us?

Secretary BENTSEN. Oh, yes. I agree with that. I do think that office goes on to state, as I stated in my testimony, that there are some troubling things still there in spite of that, and that they should be addressed.

Senator BRYAN. Senator Shelby asked a question about depositions, and I want to get just a little clarification.

You indicated as you talked with Mr. Cutler that you wanted to make sure that none of the depositions be released to any of the deponents until after all depositions were taken in conjunction with the Inspector General?

I believe that is your testimony, was it not?

Secretary BENTSEN. Yes. That is correct.

Senator BRYAN. My question to you is, if you know—because Mr. Altman has testified that he had access to his deposition to prepare his own testimony before us—do you know if any of those depositions taken by the Inspector General were released prior to our

own Counsel of this Committee taking the depositions of the individuals?

Secretary BENTSEN. Oh, to the best of my knowledge, none of them were released until Counsel for this Committee had concluded their depositions.

Now I must say to you, as I stated earlier, Senator, this Committee then requested that they be able to hold those and that they not be exchanged among witnesses until they were ready.

Now that is an unusual request, I understand, and I was told I had no legal obligation to do that. But as a matter of cooperation with this Committee and trying to help in the oversight that they are doing, I acceded to that and agreed to that.

Senator BRYAN. So not only did they not have access to the other depositions before taking their deposition before the IG, they did not have access to those depositions until after our Counsel had concluded taking their depositions for purposes of this Committee?

Secretary BENTSEN. That is my understanding.

Senator BRYAN. Mr. Chairman, I hope I will not be penalized in the future, but I am going to yield back the balance of my time and hope that our C-SPAN junkies will understand our need to conclude this thing as early as possible.

Thank you very much, Mr. Secretary.

The CHAIRMAN. Very good.

Senator Roth.

### OPENING COMMENTS OF SENATOR ROTH

Senator ROTH. Mr. Secretary, it is always a pleasure to welcome you.

Secretary BENTSEN. Thank you, Senator.

Senator ROTH. I have to tell you, I would prefer to be talking about IRA's with you—

[Laughter.]

Senator ROTH [continuing]. Rather than the—

Secretary BENTSEN. You know, that is funny. I was talking about IRA's yesterday.

Senator ROTH. Well, I will be happy to discuss that further with you at your earliest convenience.

Let me start out by saying that I do appreciate the sensitivity you have shown in your conduct to avoid conflicts of interest. I only wish that some of your subordinates perhaps had demonstrated the same sensitivity.

I was interested in your answer to a question by Senator Sasser a few minutes ago when he asked you about a White House memo limiting contacts with Government agencies.

If I understood you properly, I heard you tell Senator Sasser that you had advised Treasury employees not to have contact with White House officials about specific cases.

Is that correct?

Secretary BENTSEN. About this issue; yes.

Senator ROTH. About this particular issue.

Secretary BENTSEN. Yes.

Senator ROTH. Was that instruction put in writing, or orally? And if so, when?

Secretary BENTSEN. Well that was done, as I recall, at approximately the time that I called for the Office of Government Ethics to make their examination, their study. I believe that was done orally.

Senator ROTH. It was done when, sir?

Secretary BENTSEN. I think it was done approximately the time that I asked for the Office of Government Ethics to make their examination.

Senator ROTH. And when was that?

Secretary BENTSEN. I think that was on March 3rd.

Senator ROTH. Has that advice been followed since?

Have there been any further contacts on this specific matter with the White House since that time?

Secretary BENTSEN. To the best of my knowledge it was followed.

To the best of my knowledge, it was followed.

Senator ROTH. But in other words, after those instructions went out, it would have been improper for any Treasury official to discuss the specific matter of Whitewater with the White House?

Secretary BENTSEN. It would have been in violation of my instructions.

Senator ROTH. It would have been a violation of your instructions.

The same would be true of any telephone calls or contacts as well between Treasury and the White House?

Secretary BENTSEN. Oh, yes. Yes.

Senator ROTH. Mr. Secretary, let me ask you this: When someone recuses themselves from a case, that means they have nothing further to do with the case?

Isn't that correct?

Secretary BENTSEN. That means, yes, they have nothing to do to influence the decision on that case from that point on, yes.

Senator ROTH. In other words, they don't attend—

Secretary BENTSEN. That is the way I would interpret it.

Senator ROTH. They don't attend meetings. They don't get briefings. They don't give briefings. They don't make or receive telephone calls about the case.

Is that correct?

Secretary BENTSEN. Senator, I leave that to the lawyers. I don't know the detail of that.

Senator ROTH. Well let me ask you, since these individuals were being asked to recuse themselves, would that be your general understanding?

Secretary BENTSEN. I am sure not trying to avoid you on that, Senator. I just don't know—I don't know the legal standing of that.

Senator ROTH. Well the reason, Mr. Secretary, I raise that, is yesterday Mr. Altman claimed that he had effectively informally recused himself from Madison Guaranty even before his formal recusal, by indicating he would follow the recommendation of the RTC General Counsel.

But at the same time, he was attending meetings and getting and giving briefings and phone calls. So at least in this Senator's judgment that is not tantamount to a de facto recusal.

Do you have any comment?

Secretary BENTSEN. No, I don't. That's for the attorneys to decide.

Senator ROTH. Mr. Secretary, I would like to ask you a couple of general questions not based on the facts, but to try to glean what we can learn from the experience we have had.

One of my questions is: Would you agree or disagree that, as a general rule, it is advisable for a Federal employee to recuse himself or herself from an investigation involving the President if the individual is a personal friend of the President?

Secretary BENTSEN. I think what you have in the situation is: Is there a conflict of interest?

And, how do you think you can satisfy yourself that you have been impartial?

I think that you are in a position, a difficult position, and that one of the ways that you can bring it to an end is to recuse yourself.

As I heard and found out the facts and all, to the extent I have them, subsequent to his asking me for my counsel and advice on it—and I am speaking of Mr. Altman—I would recuse myself.

Senator ROTH. Well that certainly makes good sense to me. Let me just point out that to me it seems consistent with the Nussbaum memorandum of February 22nd, the one that Senator Sasser referred to.

As was pointed out in that memorandum, Mr. Nussbaum writes that:

It is imperative that there be public confidence in the effective and impartial administration of the laws. Political figures and others may seek White House intervention in pending criminal and civil matters, but it undermines the administration of justice if the White House even appears to be interfering in such cases.

I think one of the problems, if there is a personal——

Secretary BENTSEN. Well I share that kind of advice.

Senator ROTH. I do, too, Mr. Secretary.

Do I have time for one more question?

The CHAIRMAN. Well if it goes into a new area, I think we probably ought to stay within the time limits. If it is a very brief follow-on to this, that is a little different.

Senator ROTH. Well it really is a follow-up on this question.

The CHAIRMAN. Can you do it in a minute or so?

Senator ROTH. I would hope so.

Mr. Secretary——

The CHAIRMAN [continuing]. Because I do not want to trespass on the time of others.

Senator ROTH. Mr. Secretary, is it your position, or would it be your position that the rules of confidentiality applying to sensitive, nonpublic matters such as criminal referrals, should be waived or not waived in respect to the White House?

In other words, you did speak of a need of high White House officials, or Administration officials being able to discuss matters.

Secretary BENTSEN. Under certain conditions.

Senator ROTH. Under certain conditions.

Secretary BENTSEN. And I don't think there are clear enough guidelines on that. That is something I think that should be pursued.

As I said earlier, I have sent word to the Attorney General's department that I want their counsel on it.

Senator ROTH. My time is up, but I may have further questions.  
The CHAIRMAN. Senator Boxer.

### OPENING COMMENTS OF SENATOR BOXER

Senator BOXER. Thank you, Mr. Chairman.

Mr. Secretary, I just want to say, putting aside this matter for just a moment, congratulations on the job you are doing for our economy.

There is another good report today.

Secretary BENTSEN. Thank you.

Senator BOXER. I am really encouraged by what has happened since this Administration took over in terms of what is happening to real people in their lives.

Secretary BENTSEN. Thank you, very much, Senator.

I must say, I am very pleased with the way the economy was going. If I could write down the numbers and have my choice, I don't think I could do much better.

Senator BOXER. You are right. That is very good news for us.

Mr. Secretary, I want to first say that I have been around here only a couple of years, and then in the House for 10 years. I don't know anyone who is more respected by the Members of this Body, and this is a tough place.

You know, you never want to be the first one to leave the room.  
[Laughter.]

Secretary BENTSEN. I know.

Senator BOXER. But I can tell you that—

Secretary BENTSEN. Senator, you are generous.

Senator BOXER [continuing]. I hear hardly a bad word ever about you, and you should feel really good about that.

Secretary BENTSEN. Well, Senator, public service is sometimes a pretty tough row, but I also think that I don't know any place where you could make a difference more in the lives of people than in this kind of a row.

Some people can teach, and some can preach, and some can heal, but here you affect the lives of so many people, and you hope you make a difference.

Senator BOXER. It is true. And I would say that sometimes when we get off into who said what, and what time, and where was it, I sometimes think we lose track of that.

But I do not think the American People lose track of that. That is why I think hearings like this are good. We do our job, but we have got to come back to the real task at hand, which is to govern for the People.

Now I want to say that I agree with Senator Bennett. I think you ought to go back and try to get the RTCCEO job filled. At the behest of Senator Murray on December 16, 1993, Senator Moseley-Braun, Senator Murray, and I sent a letter to the President urging him to act expeditiously and appoint a permanent CEO of the RTC.

It did not serve you well to have Mr. Altman doing these two jobs and it did not serve him well. It did not serve you well to have Ms. Hanson running back and forth between the two agencies. And, it did not serve her well.

And I would say, adding to what my colleagues have said, if you want me to go further, as long as I have got this time and I have your ear, I think Mr. Ryan would be a superb choice to head the RTC. I think Ms. Kulka would be a superb choice to head the RTC. These people are career people and they are no-nonsense people. So, I give you that bit of gratuitous advice that you may or may not follow.

Secretary BENTSEN. Let me comment on that, if I may, Senator.

Senator BOXER. Yes.

Secretary BENTSEN. We went over I don't know how many names. We talked to many people trying to get them to take that job. We just could not find people who wanted it.

Senator BOXER. I can understand.

Secretary BENTSEN. It has had a very troubled past, and it is a very short-term career that they were looking at with not much fun along the way.

Senator BOXER. I understand that. And I say when we wrote this letter we did not realize the problems that lay ahead. But I think we have all agreed, as reasonable people, it is important to fill the slot, and we do have a couple of career people who just might still have a little strength left until December 1995.

Now I have sat here, as many others, for hours and hours, until 1:00 o'clock this morning actually—the hearing went on until 2:00 o'clock—and I have had many impressions and feelings. I want to share just a few of them very quickly with you and get your response.

We know that there were meetings that were initiated because of fear of press stories regarding Madison criminal referrals. I think those meetings were a mistake. Mr. Altman said those meetings were a mistake. I believe you said you wished they had not happened. Ms. Hanson insists there were no mistakes.

You said some of those meetings, again, should not have taken place. Mr. Altman's testimony on the 24th of February before this Committee was not complete.

Now he fixed the testimony, but quite late. And his Counsel, Ms. Hanson, who was supposed to be looking out for that, said she could not get the transcript.

I would say to you—and again this is rhetorical and it is not a question—is it not hard for you to believe that someone of her skill and talent and education, a lawyer, could not have picked up the phone and asked Steve Harris, the Staff Director of this Committee, for the transcript, or found out that actually it was in the building.

Then she says she could not fix the testimony the way she wanted to because her attorney told her she can't get involved.

Why could she not have written a letter to our Chairman explaining the fact that she wanted to make these corrections but she could not?

I say this to you because I think, when I look over her performance here, there is some disagreement here as to who is telling the truth, who is shading the truth, who is incompetent, and I put that out as my observation.

I did not know Ms. Hanson. I did not know Mr. Altman. I have just been sitting here and listening.



We had two written contradictory pieces of paper from Ms. Hanson. One said Mr. Altman never told her to go to any meeting. The other sworn testimony said he did tell her to go to the meeting.

So again we have a situation here that you have to decide because you are their boss. The bottom line is, you said it is possible that she would go off to a meeting with another Counsel.

Senator Bennett says he cannot imagine it.

I think a General Counsel is a very important position. Mr. Altman testified that he did not approve of everything Ms. Hanson did. He did not see all of her meetings or where she went.

Were you responsible for seeing where she went every day?

Did you approve of all the meetings she had?

Is that the way you treated her as General Counsel?

Secretary BENTSEN. Oh, certainly not.

Let me further state, I agree with you that if she had a different recollection of the facts, she should have stated it immediately.

Senator BOXER. Thank you for that.

Well, so here is where I see we are. We are trying to reconcile people's depositions and their different recollections, but I come back to the basic issue that we started off our conversation, our pleasant conversation, about. Why are we here?

One of the reasons is—and I think the only reason is—to make sure that that investigation on Madison Guaranty and Whitewater, and frankly any other investigation that is going on over there at the RTC, is not compromised and has never been compromised.

So I ask you in this closing moment that I have:

In your opinion, did anyone at Treasury or RTC to your knowledge ever do—or I might add, at the White House—to your knowledge ever do anything to impede a fair and full investigation of Madison Guaranty or Whitewater?

Secretary BENTSEN. No one, to my knowledge.

Senator BOXER. Do you feel very comfortable saying that?

Secretary BENTSEN. Yes.

Senator BOXER. Thank you, very much.

The CHAIRMAN. Thank you, Senator Boxer.

Senator Domenici.

#### OPENING COMMENTS OF SENATOR DOMENICI

Senator DOMENICI. Thank you very much, Mr. Chairman.

Mr. Secretary, I think you know the high respect I hold for you. I want to say your life has been, from my standpoint, an example of public service that we can trust.

Secretary BENTSEN. Well, Senator, that is one of the most even deals I have been in.

[Laughter.]

Senator DOMENICI. Now I have heard it said that trust is the coin of the realm. Certainly I trust you. You are solid gold.

Secretary BENTSEN. Thank you.

Senator DOMENICI. You, were the Chairman of a standing committee here for quite some time and you took a lot of testimony from witnesses. I want to tell you right up front that when Roger Altman testified before this Committee, and then when he attempted to correct the record thereafter, I do not think he con-

ducted himself in a way that causes me to have a great deal of trust in him.

The hearing on the 24th of February and—the two letters that he wrote to us after that, clearly indicate to me that if Secretary Bentsen was aware of this, he would have done something about it.

Let me tell you why I come to that conclusion.

First of all, on February 24th when he testified before this Committee, he provided at a minimum less than all the evidence that was at his disposal regarding questions that were asked. Some would say that he actually delivered false testimony.

But I am now going to concentrate on subsequent acts that I believe are so carefully worded—in terms of the letters he wrote to us—that I think they were further designed to evade and conceal, rather than to disclose information.

Let me take a couple of them up with you, not because you know anything about them at this point, but because I trust you and I would ask you at the end of this whether you would have approved of this if you had known about it.

Now from what I know, there are two aspects of the relationship of the RTC with the White House that are very, very important and maybe were handled improperly.

The first is the contacts that pertained to criminal referrals. Now much has been said about that; it is a very, very serious undertaking when an agency like the RTC goes to the White House and divulges information about criminal referrals that might involve some people in the White House.

Namely, they are confidential.

The second serious aspect is that the White House obviously participated in a number of discussions with Mr. Altman regarding who would be the decision maker. That is, should Mr. Altman recuse himself?

Now I have reviewed two letters that Mr. Altman wrote to this Committee which were written prior to the Grand Jury subpoenas being served. My understanding is those subpoenas were served on the 4th day of March.

Now these letters were written one on March 2nd, and one immediately thereafter on March 3rd. Now I would have you note, if you care to read these, that conspicuously absent from both of these letters, which are supposed to be correcting a record of his testimony, conspicuously absent are (1) the mention of recusal; and (2) the mention of criminal referral.

Now you understand, Mr. Secretary, he is now telling the Senate that “I didn’t tell you everything, and here are some things I want to tell you regarding meetings or substantive contacts.”

It seems to me more than a coincidence that the two most important aspects of the Treasury–White House contacts are the same subjects which were concealed from the Committee on the February 24th hearing—despite direct questions on these points—and omitted from these letters.

Now let me also tell you, Mr. Secretary, on March 1st before either of these letters was sent by Mr. Altman, a meeting occurred in the White House. Mr. Podesta was in charge and there was more than one person there.

Guess what the subject of the meeting was?

The subject was that the White House is very concerned, Mr. Altman, because you didn't tell the Committee about some important meetings that occurred. And they specifically said, you didn't tell them about the criminal referrals, one; and you didn't talk about recusal, two.

Now when they started talking about criminal referrals, the record says that Mr. Altman said to them, "We shouldn't be talking about that; I'll take care of that myself."

Now, Mr. Secretary, to my amazement, on March 2nd, after all of that occurs, and after that conversation with Mr. Podesta—and there is evidence that the White House was really worried about this—here is what Mr. Altman tells this Committee, a committee just like the one you used to chair:

"I have learned today of two conversations which did take place between Treasury staff and White House personnel on this matter." Continuing to quote. "My information is that both related to handling of press inquiries."

Now can you imagine, after talking with Podesta in the White House and being told, Mr. Altman, you didn't talk about criminal referrals, and you didn't talk about recusal, he writes us this letter. This letter has—the really gut paragraph is that one [indicating] and it says:

"These two conversations both related to the handling of press inquiries."

Now, Mr. Secretary, Mr. Chairman, does anyone—would you believe that a witness is correcting a record regarding substantive information when he says the meetings related to the handling of press inquiries, and he fails to tell us about: recusal and criminal referrals?

It seems to me it would be easier to just say it, if one really wanted to tell us what those meetings were about.

Now if that is not enough, Mr. Chairman—excuse me, Mr. Secretary on March 3rd, the very next day—

The CHAIRMAN. Senator Domenici, I do not want to interrupt you, and I will let you complete this, but I do want to indicate that the time has expired.

Senator DOMENICI. I am very sorry.

The CHAIRMAN. If you want to add your other point, you should probably do so.

Senator DOMENICI. I will do it quickly.

Mr. Secretary, on March the 3rd another letter is written, very carefully written. Nowhere in the letter is "recusal" mentioned. Nowhere in the letter is "criminal referrals" mentioned.

Now in neither letter, in neither letter, Mr. Secretary does Mr. Altman say "I may have to amplify the record more." He does not say that.

Here is the first one. For all we knew, had we closed this up, Mr. Chairman, we could have said, well, he has corrected the record.

Now, Mr. Secretary, I do not like to put you on the spot—

Secretary BENTSEN. But you are about to.

[Laughter.]

Senator DOMENICI [continuing]. But frankly I do not believe you as Chairman of a committee, or as Secretary—since I think you do

believe that it is important that we can believe witnesses, and trust is the coin of the realm—I do not believe you would have let one of your employees do this to a committee if you knew about it.

Perhaps you would tell us your thoughts on that.

Secretary BENTSEN. Well, Senator, my understanding is that Mr. Altman says that he wished he had added more to it. I understand that that point was made last night. I did not watch the testimony.

Senator DOMENICI. Well thank you very much, Mr. Chairman.

The CHAIRMAN. Senator Campbell.

### OPENING COMMENTS OF SENATOR CAMPBELL

Senator CAMPBELL. Thank you, Mr. Chairman.

Most of the questions I had prepared have been asked by the Senator from Utah and the Senator from Nevada, and my friend the Senator from California, Ms. Boxer, so I would like to just perhaps take some of my time to make a general observation and say that I would like to associate myself with the comments of Senator Boxer, and particularly the very specific question she asked the Secretary about his knowledge of the Whitewater or Madison Savings question.

Also, I would like to associate myself with her comments on the very fine job the Secretary has done.

I have to say that if you can convince anyone to take over the RTC now you ought to be canonized, because it is not a very popular job.

I was interested in your written statement when you talked on page 4 about a Senator who said, "An allegation is synonymous with conviction without the benefit of trial or conviction."

Did I read that right? "Allegation is synonymous with conviction without the benefit of trial or hearing."

I have also been concerned about the witnesses that have been testifying here the last few days, and I worry that the general public may draw the same kind of a conclusion.

It is really unfortunate that as one of its great driving forces, America now has replaced courage with fear in politics.

In an effort to distance ourselves from any question of impropriety, we seem to have a system in place in which no one is in charge. That may be a rather naive observation for me, but I read the papers like anybody else.

I read this morning's paper and I noticed that it seems that almost all the stories seem to be driven by fault-finding rather than finding solutions, and with condemnations rather than trying to identify any improvements.

After 4 days of hearings, I am inclined to think that we have a system in Government now that legitimately prevents people from being too responsible.

We have heard testimony that people are in charge but cannot be at the meetings.

They are in charge but cannot make the decisions.

They are in charge but are insulated by different factors.

They are in charge but they cannot be involved in day-to-day operations.

They are in charge but they cannot take part in any investigations.

We heard those last two from Mr. Altman yesterday.

They are often in charge but cannot be responsible for the actions of anyone else.

I think that is driven by ethics rules, and existing law, or not wanting to create the impression of not being fair, or so on. But that atmosphere, it seems to me, does a great disservice to people of great integrity and really an impeccable record like you have.

I think anybody in the Senate, or anybody that has been around public life for awhile knows the great contributions that you have made, Mr. Secretary. I am convinced that when you finally go home from public office and people measure what you did, it will be in a very, very favorable light.

I might be missing the bigger picture, but I hate to think about what kind of Government we are going to have in 20 more years when we cannot find a guy or identify who is in charge, let alone find where the "buck stops" as Harry Truman used to say.

I just wanted to make that observation, Mr. Chairman, because most of the questions I had have already been answered.

Thank you.

The CHAIRMAN. Thank you, Senator.

You still have time remaining. Do you want to yield it to one of your colleagues?

Senator CAMPBELL. Yes, if we go back and forth here yes, I would like to yield. I know Senator Moseley-Braun has several questions, I would like to yield to her.

The CHAIRMAN. You only used about half your time.

#### **OPENING COMMENTS OF SENATOR MOSELEY-BRAUN**

Senator MOSELEY-BRAUN. Yes. Thank you very much. I'll use the other half, we'll just be a pair here. Thank you very much, Mr. Chairman.

Mr. Secretary, it is good to see you again.

Secretary BENTSEN. Good to see you, Senator.

Senator MOSELEY-BRAUN. I'd like to, again, echo and associate myself with the remarks of my colleagues congratulating you on the fine work that you're doing and on where our economy is going and I think it's been good news all around and, in no small measure, due to efforts of this Administration.

Mr. Secretary, I'd also like to congratulate you. I was delighted to read in your statement and in the statements of other witnesses, such as Mr. Foreman, that the first meeting you held, major meeting you held as Secretary of the Treasury, was an ethics meeting for your employees and for the people who were working under your watch. And, particularly in the atmosphere that Senator Nighthorse Campbell speaks of, it is so critical in these times, things for years may have been taken for granted can't be anymore. And so I'd like to ask a couple of questions specifically going to the interface between Treasury and the RTC.

And last night with Mr. Altman, I raised the question with him as to whether or not he had been concerned of any potential conflict or difficulty in wearing two hats, one as the Deputy Secretary of Treasury and the other as the Interim CEO at the RTC. And we pursued that a little bit, and I guess my first would be, had you in any way—had you talked to him, had you tried to suggest to him

that maybe it wasn't a good idea to take these two jobs that were related and potentially in conflict with one another?

Secretary BENTSEN. Well, it certainly wasn't by choice, for him or for me. We were locked into the law, the Vacancy Law, that it had to be someone that was a Presidential appointee that had been confirmed by the Senate, and at that point there were only two of us, and——

Senator BOXER. And you had the sense not to take it.

Secretary BENTSEN [continuing]. He drew the black bean.

Senator MOSELEY-BRAUN. But you did have, then, a discussion with Mr. Altman in this regard?

Secretary BENTSEN. Yes, we did.

Senator MOSELEY-BRAUN. When did that discussion take place?

Secretary BENTSEN. It took place at the time he was taking the job.

Senator MOSELEY-BRAUN. That would have been in March 1993?

Secretary BENTSEN. Yes, I think that's the right date.

Senator MOSELEY-BRAUN. Was it a private conversation between the two of you or were there——

Secretary BENTSEN. We talked it over.

Senator MOSELEY-BRAUN. Were there other people present?

Secretary BENTSEN. Not that I recall.

Senator MOSELEY-BRAUN. And so the conclusion from the discussion between the two of you—now, as I recollect, Mr. Secretary—excuse me just one second—with regard to that conversation, Mr. Secretary—and again, I don't want to—I don't want to pile on in a way on this, but I think it is kind of significant. What did Mr. Altman say to you and what did you say to him?

Secretary BENTSEN. Oh, I don't recall that, and I don't think it was a lengthy conversation. I think we had an understanding as to my responsibilities as Secretary of the Treasury and his responsibilities as head of the RTC.

Senator MOSELEY-BRAUN. All right. Mr.—in the testimony we've heard earlier, both by Mr. Altman and by Ms. Hanson and others, it was pretty clear that Secretary—Deputy Secretary Altman had used—oh, the time has about to—wait a minute. That's not my—oh, so then—well, if I can, Mr. President, with the forbearance of Senator Hatch, since I will be coming on my 5 minutes, I won't take my 5 minutes if I may be allowed to finish up this line of questions.

The CHAIRMAN. Senator Hatch is agreeable to that. Why don't you continue.

Senator MOSELEY-BRAUN. Thank you so much. Thank you, Mr. Chairman, and thank you, Senator Hatch.

And again, I won't be too long, Mr. Secretary, but I'm concerned about, again, the interface between these two agencies, and Deputy Secretary Altman made the point that he used, or the Treasury personnel were used in regards to business that really came before the RTC and that should not have come before Treasury or the Oversight Board as in its relationship to Treasury.

Secretary BENTSEN. Senator, we're in this kind of a box. As I recall, I could be corrected on this, but virtually all of the employees working at RTC were already from another area—they were from the FDIC, and that Mr. Altman had the authority to draw on other

departments, and in this instance drew on Treasury itself to help fill in some voids and get the job done.

Senator MOSELEY-BRAUN. I guess what I'm just trying to get to, Mr. Secretary, is that the law made it pretty clear—makes it clear that the Oversight Board and Treasury are not to be engaged in case-specific matters coming before the RTC.

Secretary BENTSEN. Absolutely.

Senator MOSELEY-BRAUN. And yet we found ourselves with the situation in which Deputy Counsel at Treasury was, in fact, involved with case-specific matters having to do with the RTC.

Secretary BENTSEN. Well, you—

Senator MOSELEY-BRAUN. And I do understand the box—practical box that you're talking about. I guess my final question, and this really is in the nature of a wrap-up and I would allow you—I would hope that you could just expound on this point; that is with regard to management and structural reforms within the agency, have you had occasion to talk about or think about or develop plans to create more of a separation between these agencies so that the investigatory function and the regulatory functions don't get—don't get confused as I think we have seen?

Secretary BENTSEN. Let me say now we have General Counsel for the RTC and we have a Chief Executive for the RTC, so there is not near as much possibility of confusion of the rules and regulations. But I do think we have to go beyond that. I do think the Office of Government Ethics made some valid points and that some of these are troubling areas and that there should be clear definitions of authority in each of these instances and we're going to move on that. I'm going to talk to the IG's office, to the Office of Government Ethics, to the Attorney General's department, Justice and such Counsel as we might get from this Committee to take the steps that are necessary.

Senator MOSELEY-BRAUN. Well, I know, Mr. Secretary—I started to say Mr. Chairman also. You are so familiar around here, everybody thinks of you as Chairman. But I want to thank you, Mr. Secretary, for your testimony and I look very much forward to working with you and with the Chairman of this Committee on behalf of coming up with some procedures and changes in the law, perhaps, if necessary, to go through and discuss this issue regarding, again, the interface between these agencies so that we don't run into these problems down the road.

Secretary BENTSEN. Senator, thank you, and I understand the confusions of titles. I was getting out of an elevator the other day in Washington, a young man took a look at me and stopped the elevator door and held me and he said, I know you. He said wait a minute, let me think. He said, yes, I know, you are Senator Bentsen. He said, I went to a political rally of yours in Texas. He said, whatever happened to you?

Senator MOSELEY-BRAUN. Thank you very much, Mr. Secretary.

The CHAIRMAN. We won't ask you right now to give the answer to that question, but I'd like to hear that later.

Senator Hatch.

**OPENING COMMENTS OF SENATOR HATCH**

Senator HATCH. Thank you, Chairman. And welcome, Lloyd, we're happy to have you here. I just want to say for the record, in my 18 years here, you've always been a great person of candor and integrity and wisdom and honesty. And, frankly, your word has always been your bond, so that's important. And I think all of us feel that way.

Secretary BENTSEN. Thank you very much.

Senator HATCH. Let me just try to clarify or clear up a few discrepancies that bother me. Do you recall the first conversation you had with Mr. Altman on the subject of his recusal from Madison Guaranty, and if so, could you summarize that conversation for us?

Secretary BENTSEN. I could be corrected on trying to remember a date, but I would—I think that was on February the 1st. And he told me he was trying to make up his mind on recusal and that he'd been challenged in that regard and challenged by Members of the Congress as to a possible conflict of interest, and he was asking for my advice. I told him that that had to be his decision, that he knew the facts in that case, I did not. And I must say, I sympathized with him very much about the tough spot he'd been put in. I understand he thinks that I counseled him to recuse himself. He may have come to that interpretation because I was sure sympathizing, but I don't recall so telling him.

Senator HATCH. OK. Let me ask a few questions about reports, including Ms. Hanson's testimony that prior to the February 2nd meeting at the White House, Mr. Altman informed you that he had decided to recuse himself from the RTC civil investigation in the Madison Guaranty case. Do you recall Mr. Altman telling you at that time that he had decided to recuse himself?

Secretary BENTSEN. I recall he told me that but not at that time. I don't remember the date, and I know I was relieved when he told me. And, as I have found out additional facts subsequent to that, if I'd have been him—if I would have been in his position, I sure would have recused myself.

Senator HATCH. He stated that the first time he decided to recuse himself was February 25th. Would that be consistent with your recollection?

Secretary BENTSEN. Well, at that time, yes. If that wasn't the date, it's close to it.

Senator HATCH. Were you aware that Treasury General Counsel Hanson had recommended to Mr. Altman that he recuse himself from Madison matters before that?

Secretary BENTSEN. I don't remember being told that.

Senator HATCH. OK. Did you at the time have an opinion on whether Mr. Altman should recuse himself—well, you've expressed that.

Secretary BENTSEN. Yes.

Senator HATCH. You said that if it had been your choice, you would have done it?

Secretary BENTSEN. Yes.

Senator HATCH. Can you tell us why you, if it had been your choice, you would have done it under those circumstances?

Secretary BENTSEN. Well, I think he was put in a position where he was considered a friend of the President and he was being chal-



lenged that that friendship would influence his judgment and I think he was right to just get rid of that argument.

Senator HATCH. OK. Yesterday, Mr. Altman said something to the effect that you expressed your own surprise or puzzlement to him that he did not recuse himself, that it was in his own self-interest to recuse. Did you offer Mr. Altman any advice on recusal from Madison matters and, if so, what was that advice? Did you, for example, tell Mr. Altman that recusing himself or making a decision to recuse was something he had to do?

Secretary BENTSEN. I told him he had to make that decision—that was his, his alone—that he had the facts, that I did not.

Senator HATCH. Did anyone from the White House ever discuss the matter of Mr. Altman's recusal with you?

Secretary BENTSEN. I don't remember anyone in the White House discussing it with me.

Senator HATCH. Thank you. That's all I have.

The CHAIRMAN. Thank you.

Senator Murray.

#### OPENING COMMENTS OF SENATOR MURRAY

Senator MURRAY. Thank you, Mr. Chairman, and welcome Mr. Secretary. Again, I have the privilege of going last and listening to all of the comments before me. We've been here for 3½ hours and I have to ask you the question I've been asking myself for the last several hours. Why are you here?

Secretary BENTSEN. Oh, it is not for me to say.

Senator MURRAY. Well, as long as you are here, I really have to ask you a question. You knew Jack Kennedy, you knew Sam Ervin, you knew Howard Baker. You've been here a long time. I'm new to this. If you were sitting on this side of the table listening to all this testimony and hearing everything, what conclusions would you come to?

Secretary BENTSEN. Boy, I don't want to tell this Committee what to do, but, Senator, there has been—you've had three investigations and they've been independent investigations. They say no criminal act was committed, no violation of ethical standards, but some troubling things. And I, as Secretary of the Treasury, assume the responsibility for what happens in Treasury, and I have also told you we're going to try to correct some of those concerns, and we'll be pleased to have the recommendation of this Committee, which has been deeply involved in this issue, and in turn that of the Justice Department and the IG and I sure want to get the Office of Government Ethics involved in it. And we're going to move and try to see that we don't have this kind of problem develop in the future and then I'd arrive at a judgment, but that's yours.

Senator MURRAY. Do you think anybody should be removed from their job?

Secretary BENTSEN. I think that whatever happened here was not with the intent to harm. I think there were some errors in judgment, but I haven't found anybody that calls them right all the time.

Senator MURRAY. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Murray.

Mr. Secretary, there's one other item I want to cover with you and then we may be near finishing, depending upon what Senator D'Amato wants to raise. I want to just quickly review with you the history of this recusal matter with Mr. Altman because it's very important and you were at least involved in aspects of that as it unfolded.

Let me tell you what's in our Committee record so that you have a clear frame of reference here.

Mr. Altman had a meeting with you and Ms. Hanson on February 1st where he was thinking aloud about what he ought to do and you have expressed the view that that was going to have to be his decision. His testimony—and it's undisputed—is that he had reached the decision, that he was leaning in the direction of recusal, and that that was his state of mind and that he had not made a final decision on that, he was going to sort of weigh that, he was seeking your advice, presumably, and the advice of others.

Then he went to the meeting at the White House on the 2nd, the very fateful meeting. He testified last night in the middle of the night that sometime after he left your office and before he got into that meeting at the White House on the 2nd, he actually did make the decision to recuse himself. So he went into the meeting and in the course of the meeting, he declared that intention.

Well, now what we have in the way of testimony as to what followed, probably the most useful guidance we have, in addition to what Mr. Altman confirmed last night, are the diary entries of your Chief of Staff, Josh Steiner, because he took—he put notes down based on what he had been told by Mr. Altman after that meeting. Mr. Altman also gave us some of the flavor of that last night. And the bottom line is that Mr. Nussbaum, particularly, didn't like the sound of Mr. Altman's decision to recuse himself, and so, in some manner, he expressed himself forcefully—and you can get the full flavor of it in terms of your Chief of Staff's diary notes on that—and what happened was that it obviously had enough of an impact on Mr. Altman that he decided that he'd better sleep on it, despite the fact that he walked in with the intention of—had made the decision to recuse himself.

So he slept on it overnight and the next day decided that he wouldn't recuse himself and apparently on that next day, if my recollection is right, he spoke with you and indicated that he had now reached the judgment that he would not, at least for the time being, recuse himself.

Now, that's what the record is. We don't have anybody disputing that chain of events. Now, the feel of that and the look of that, I think, is troubling. Because here you have a fellow going over to the White House, he says he's made up his mind, he goes in, the President's lawyer, in terms of the Institutional Office of the Presidency, his lawyer is there, doesn't like it, really applies some form of pressure—and you should read the words in Josh Steiner's diary in terms of the flavor of what, the intensity of it—and Altman gets turned around here and he changes his mind and then he stays in that status for some period of time.

Now, there's an end to the story in terms of when he decides to recuse and how he decides to recuse and so forth. One of the concerns that I have and I think you have to think about as well—

I mean, I think every senior officer of the Government has to think about this who has any relationship to this and just is a citizen as well—and that's the appropriateness and the propriety of Mr. Nussbaum in that capacity, in effect, trying to strong-arm Mr. Altman out of his decision. Now, I find that troubling.

My question to you would be, is that the way things ought to work? Is that a proper action for Mr. Nussbaum to be taking in this situation?

Secretary BENTSEN. Let me say first—the February 1st meeting I have spoken on, I was told by Roger Altman at some later date that he was not recusing himself. I don't recall that it was February 3rd.

The CHAIRMAN. That's what our records indicate.

Secretary BENTSEN. Well, I don't have that recollection. I think an argument can be made, you know, that you have this responsibility and you have to carry it out.

The CHAIRMAN. Why is it Mr. Nussbaum's obligation to weigh in on that? What vests him with the authority to step into Mr. Altman's decision on that?

Secretary BENTSEN. I assume because he was representing the White House in that situation.

The CHAIRMAN. But didn't he have a conflict there because this involved a case that touched the White House? Should he have done that?

Secretary BENTSEN. Well, I looked at the Office of Government Ethics report and they say that there was neither criminal—that there was no violation of ethical standards, and they're the experts on that type of thing.

The CHAIRMAN. Well, I hear that. Are you comfortable with that? I mean with the situation I've just described.

Secretary BENTSEN. Let me tell you, they live and work at that and I'm not going to question their judgment.

The CHAIRMAN. I've got to tell you, I'm troubled about it.

Secretary BENTSEN. OK.

The CHAIRMAN. Senator D'Amato.

Senator D'AMATO. Mr. Chairman, you went right to the heart of the matter. I know it wasn't easy for you. It's not easy when you have a colleague with as distinguished a reputation as the Senator.

Mr. Secretary, did Josh Steiner convey to you the enormity of the pressure that he saw being placed on Mr. Altman as it related to the issue of recusal?

Secretary BENTSEN. No, he did not. That, obviously, I got out of what I saw in his diary.

Senator D'AMATO. Did you feel, when Mr. Altman came to you the first time and thereafter, several days later—and I understand the sequence is redacted—exactly which date is not there, but our information is on the 3rd, after he came back, you knew he had visited the White House, and he told you that he indicated to them that he had decided not to recuse himself. Did he indicate to you that Mr. Nussbaum or others wanted him to stay on?

Secretary BENTSEN. I did not know that he had visited the White House and I don't think he told me that Mr. Nussbaum and others wanted him to stay on. I thought he'd made up his mind. When he

was in front of me, I think he was troubled and trying to make up his mind.

Senator D'AMATO. And when he came back and told you that he had changed his mind, did you tell him that?

Secretary BENTSEN. I didn't understand that he changed his mind. I understood that he'd made up his mind.

Senator D'AMATO. What did you say to him at that point?

Secretary BENTSEN. Acceptance and acknowledgment of what he'd done, made up his mind.

Senator D'AMATO. Well, Mr. Secretary, Roger Altman was under your jurisdiction. You knew that he had expressed, obviously, his concern that here was a case that affected the Clintons. It could affect them. It was a possibility. That he was a personal friend of the Clintons. In addition, he was in a unique role working with Mrs. Clinton on—the health task force, and that he was the ultimate decisionmaker. When he initially indicated to you that his inclination was to step aside, you said to him——

Secretary BENTSEN. No, he didn't indicate that to me and I have said that repeatedly.

Senator D'AMATO. He never indicated that to you, but when he told you that he made up——

The CHAIRMAN. You were—let's let the Secretary finish.

You were going to say what he said.

Secretary BENTSEN. He was asking for counsel and advice the way I read him.

Senator D'AMATO. What counsel did you give him?

Secretary BENTSEN. I told him it was his decision, that I didn't know the facts in the case, that he had to make that decision.

Senator D'AMATO. Well, he didn't talk about the case. He talked about his position of being close to the Clintons and being the ultimate decisionmaker, didn't he? You knew he was close to the Clintons.

Secretary BENTSEN. Well, of course I knew he was a friend of the Clintons, obviously so. I don't recall the details of the discussion.

Senator D'AMATO. Well, Mr. Secretary, as painful as this may be and I've said it a short time ago, I think you had an obligation then to give him counsel to step aside. I think the matter——

Secretary BENTSEN. Senator, I don't agree when I didn't know the facts in the case. I am not about to counsel someone——

Senator D'AMATO. This is not a question, Senator——

Secretary BENTSEN [continuing]. On something that is as important as that to that person without knowing the facts.

Senator D'AMATO. Mr. Secretary, we're talking about one case and the question of the facts, excuse me, is irrelevant.

Secretary BENTSEN. Well, I don't agree.

Senator D'AMATO. We're not talking about the merits of the case. We're talking about a person who comes to you who says I have a decision to make, whether I should recuse myself or not in a case that affects the Clintons. You don't need to know more than that because you know that he has a personal relationship and will be the ultimate decisionmaker. Now, that you knew——

Secretary BENTSEN. Senator, you and I have a difference of opinion on what should be done in that.

Senator D'AMATO. Well, then, tell me how you differ from that opinion.

Secretary BENTSEN. I just told you.

Senator D'AMATO. OK.

Secretary BENTSEN. I think that you have to know the facts in the case before you arrive at that kind of a judgment.

Senator D'AMATO. Well, I'm suggesting to you that given the facts——

Secretary BENTSEN. I wasn't given the facts. And frankly, I did not want to get in a position of any intervention on my part.

The CHAIRMAN. Well, in fact——

Senator D'AMATO. Here is what Mr. Altman says——

The CHAIRMAN. We'll come back to that. If you'll permit me.

I think in your role as the oversight person with respect to the Oversight Board, you really couldn't do that even if you wanted to. I mean, it seems to me that, you know——

Secretary BENTSEN. That's right.

The CHAIRMAN [continuing]. Your responsibility there was such, because you have to stay removed from these cases, that even if you had a firm and final judgment of advice, you'd have to withhold it because, in a sense, that compromises your own role in this other status. Wouldn't that be true?

Secretary BENTSEN. That's true, Mr. Chairman.

Senator D'AMATO. Let me suggest to you—here is what Mr. Altman says in his own words when this issue came up. Said the Secretary, "he knew it was optional. He said it was purely a personal decision," which is what you've related, "meaning that you could go either way on this. But it's a personal decision" and again that verifies your—there's no doubt about it.

Secretary BENTSEN. That's not exactly my words. I've told you what my words were.

Senator D'AMATO. For the sake of—and for the sake of appearances or something to that effect, you would be better off doing it.

Secretary BENTSEN. No, I don't recall saying that.

Senator D'AMATO. All right. Given the time and whatnot, Mr. Secretary, I'm going to say to you again that if a deputy comes to you and states an obvious situation where there is a very real case—possibility of a case being brought that might involve personal friends and that he is vested with the ultimate decisionmaking, the question of whether or not that person should step aside for that case seems to me to be one in which someone with your seasoning, with all of the years that you have been here, would have said, step aside.

Secretary BENTSEN. Senator, if you go back and look at the rules that the Chairman of the Oversight Board operates on, as directed by the Congress, there will not be an intervention in a case-specific, and that could have been interpreted as that——

Senator D'AMATO. You mean——

Secretary BENTSEN [continuing]. And I was not about to get into that kind of a compromise.

Senator D'AMATO. Mr. Secretary, you're trying to interpret the rules at this point to say that if someone comes to you—and we're not—and indicates that he has a personal relationship with a case that will come, and it is before him and there's a very real question

as to whether he should step aside, recuse himself from that case, that you're interpreting it to say it would be a violation of rules to suggest step aside? Let me ask you——

Secretary BENTSEN. Yes, I certainly think it could be interpreted as an intervention into the case, in a case-specific and I wasn't about to get into that position.

Senator D'AMATO. OK. I can understand that, Mr. Secretary. I just disagree. I think at that point in time you should have said to him, you don't want to embarrass yourself, the Department, the Administration, you should step aside and don't worry about the White House or anybody else.

I will say this to you——

The CHAIRMAN. Could you just yield if you are going to move off that point because this is one area where I think our interpretation is different.

I would make the point that you were in an inherent conflict situation there yourself. If that question is presented to you and even if you wanted to express an opinion—because you wear two hats, you're there as Treasury Secretary, you're also there in this other duty as the head of the Oversight Board where you're restricted from getting into any of these cases in any manner shape or form.

So if somebody comes to you and asks you whether they should take an action that, in effect, is going to relate to one case or another, you're under an injunction, by the very rules of that other assignment to not take that decision. You can't do it and you didn't. Your testimony is you stepped back from that and——

Secretary BENTSEN. That's the way I interpreted it.

The CHAIRMAN. And as you should have. I would argue that if you had, in fact, said something to him as to what he should have done right then, I think you would have crossed a line that would violate this other charter you have and I don't think that would have been proper to do, quite frankly.

Secretary BENTSEN. I agree with that, Mr. Chairman.

Senator D'AMATO. In light of what you know now, do you think that his failure to recuse himself until the day before The New York Times article, and only because The Times called him up and told them they were going to write an article on why he didn't recuse himself, do you think that he comported himself according to the manner in which he should in his position?

Secretary BENTSEN. Mr. Chairman—Senator, let me state that with as much as I know about it now, I would recuse myself.

Senator D'AMATO. OK. That's fair.

Secretary BENTSEN. That's it.

The CHAIRMAN. His comment was he thought that was fair. He was acknowledging your statement.

Senator D'AMATO. I would make an observation as it relates because I detect here an obvious thrust and it doesn't—you have not initiated it but it's one that has been, I think, rather well-orchestrated by Mr. Altman. I made the analogy of Mr. Altman that he seems to me as the kind of guy, if he's on a sinking ship, throws the women and children over and I think he did that with Mrs. Hanson. I think he did that with Josh Steiner.

For us to really believe that Mrs. Hanson—and you didn't have these facts and maybe an opportunity to review them—that Mrs.

Hanson went over there for the first time to the White House on September 29th shortly after she came on board. This is early on in 1993, this wasn't subsequent. Only been there a short time. She took it upon herself to call up Bernie Nussbaum and go over there in light of the memorandum that she had prepared the following day, a memo to Mr. Altman—you cannot believe it. It just—and this is—I can't believe it. It is just incomprehensible. She's just on the job, she comes in there, she calls up the White House Counsel to go brief him.

Now, when we look at that in connection with other activities, there's a pattern. People do things in certain ways. Her story is much more believable when you look at Mr. Roelle, who has nothing to hide, a career civil servant. He's the fellow who initiated the first call on September 29th. When he calls the second time on October 6th, he says he hears and—he's there when Mr. Altman says to Jean Hanson, call Bernie and Jack and the Secretary.

Now we've got a whole new situation. We're going to try to have a new scapegoat because he pretends maybe he didn't know what was happening because she shakes her head one way or the other. It is one of the most inventive, creative processes. And of course the letters that he sends on the 2nd and 3rd, well, that's her fault. The fact that the White House, uncontroverted, called him and told him about this, but he insists on responding in this manner with, oh, but that's her fault.

And the letter on the 11th which he sends without her, again, I don't know whose fault that is. It is always somebody else's fault. It is always somebody else that has changed the facts and that's what we have with Mr. Altman and those are the depositions and those are the facts and that's how I see it.

And he didn't have the courage and the guts to stand up to Bernie Nussbaum and say to him, I am recusing myself. That meant taking himself out, keeping himself from one case because he wanted to be part of that power structure. And, Mr. Secretary, you look at the record, it's undeniable, he runs over to the White House. Whether he did it through Ickes or Maggie Williams or runs over the next day to say, I'm on the team, boys, don't worry, here I am, I'm part of the team. And that fact is indisputable.

Then 3 weeks later, he'd have you think we should pat him on the back because he finally came to the decision on February 25th, and of course he announced it first to The New York Times because an editor called him up and told him, we're going to beat the heck out of you and he said, well, I want you to know that I'm recusing myself. And then all heck breaks loose.

Then we get the White House sending around memorandums, doing detailed memos, Mr. Secretary—and you're not aware of this—ascertaining who will now control, since he has recused himself, who will now control and be the decisionmaker as it relates to Whitewater. And that's why I think Members on this, in this Committee, Democrats and Republicans, share a very real concern for the manner in which he discharged his responsibilities and for the manner in which he testified and failed to testify. And let me tell you, we've had people who have been indicted for far less for withholding—Elliott Abrams—for withholding information, let alone answering untruthfully.

If you read that record, you can only come to one conclusion. He withheld information, information that he had, he withheld it even when he had an opportunity, was advised to correct the record and thereafter he, in addition, answered untruthfully.

I thank the Chairman and I thank the Secretary.

The CHAIRMAN. Mr. Secretary, thank you for your appearance today. And you've answered our questions directly and I think fully and we appreciate that. You've been asked by some Members to review some things and I trust you'll do that in due course.

Secretary BENTSEN. Thank you.

The CHAIRMAN. Committee stands in recess. We'll reconvene. The Committee will reconvene at approximately 2:00. We're set, 2:00 p.m. is our start time. I know there is a vote in the meantime. The Committee stands in recess.

[Recess.]



## AFTERNOON SESSION

The CHAIRMAN. Committee will come to order, please. Let me invite all those in the room to find seats for themselves. As I indicated earlier this morning, our second witness today would be Mr. Eugene Ludwig, who is here with us now. He is the Comptroller of the Currency.

Mr. Ludwig, I understand that you have a statement that you want to deliver and I'm going to ask you to do that. Before I do, let me ask you to stand and raise your right hand.

Do you swear that the testimony you're about to give is the truth, the whole truth and nothing but the truth, so help you God.

### TESTIMONY OF EUGENE A. LUDWIG, COMPTROLLER OF THE CURRENCY, OFFICE OF THE COMPTROLLER OF THE CURRENCY

Mr. LUDWIG. I do.

The CHAIRMAN. Very good. We'll make your full statement a part of the record. Why don't you go ahead and deliver whatever remarks you wish to deliver now.

Mr. LUDWIG. Thank you.

Mr. Chairman and Members of the Committee, I am pleased to appear before you today in connection with your inquiry into communications between officials of the White House, the Treasury Department, and the Resolution Trust Corporation relating to the Whitewater Development Corporation and Madison Guaranty Savings & Loan Association. Too much of the public discussion of these topics has flowed from rumor, speculation and innuendo. It is time to clear the air and get to the facts. Your hearings will help all of us set the record straight, put these issues behind us, and get back to business.

As you are aware, the Office of the Comptroller of the Currency has no jurisdiction over the Whitewater Development Corporation, nor over Madison Guaranty Savings & Loan Association. Neither in my capacity as Comptroller of the Currency, nor in my capacity as a director of the Federal Deposit Insurance Corporation, has anything related to Whitewater or Madison come before me, except for two unsolicited copies of Freedom of Information Act requests from reporters that I will describe more fully in a moment. Even so, earlier this year I recused myself both as Comptroller of the Currency, and as a director of the FDIC from any matter involving the President or Mrs. Clinton in a personal capacity, including Whitewater and Madison. Beyond what any American can read in the newspapers, I have no knowledge of Whitewater or Madison.

Despite my lack of involvement in these matters, I have had contacts with the White House or the Treasury relating to Whitewater or Madison on three occasions. I described all three in my memorandum to Mr. Edward Knight, Executive Secretary to the Sec-

retary of the Treasury, dated March 11, 1994. I prepared that memorandum in response to the Grand Jury subpoena to the Treasury Department from the Office of Independent Counsel, Mr. Fiske. The Treasury Department has provided a copy of it to the Committee. I am happy to go through these events again with you here today.

The first of the three occasions I described in my memorandum involved two Freedom of Information Act requests relating to Madison or Whitewater. Reporters at The Washington Post and The Baltimore Sun submitted these requests to the FDIC. Somebody at the FDIC sent copies of the requests to me. I'm uncertain about who sent them. I think it may have been the Acting Chairman of the FDIC, Skip Hove. These were public documents.

Upon receiving copies of the inquiries, I faxed copies to Undersecretary of the Treasury, Frank Newman, Treasury, Chief of Staff Josh Steiner, and Bruce Lindsey and David Dreyer in the White House press office, on December 2, 1993. To the best of my recollection, I did this because I thought they might want to know about press interest in these matters. I knew no more than I had read in the newspapers about the matters referred to in the FOIA requests. I never asked anybody to send this material to me. Nobody at the Treasury Department or the White House asked me to send it to them. I never asked about these matters. And, to the best of my recollection, I never discussed these FOIA requests with anybody at the White House or the Treasury, either before or after I sent out the copies.

The second occasion occurred during the week between Christmas and New Year's 1993, at the Renaissance Weekend conference. The Renaissance Weekend is a series of symposia and presentations on topics ranging from international relations, economics and business to the arts. Hundreds of people attend. I was sitting in a large seminar listening to a presentation; I think it had something to do with international relations. The President entered the room and sat down near me at the table.

Because I know that what happened next is of interest to this Committee, I've tried hard to remember it as accurately as I can. As I recall, the President was reading a newspaper, and we were commenting to each other on and off about the seminar. At one point, the President said something to the effect that he could not understand all the fuss about Whitewater. He expressed the belief he had done nothing wrong, and he indicated he had lost money on the transaction. He then asked me whether I thought I could advise him. I do not recall responding specifically. Our conversation moved on and shortly thereafter, the President left the room. I assumed we would touch base with regard to his question later during the Renaissance Weekend. Our entire exchange relating to Whitewater lasted perhaps 30 seconds.

Let me make two points about the President's question because press reports may have created some confusion. First, my recollection is not that the President asked me to advise him. My recollection is that he asked me whether I thought I could advise him, that is, whether it would be permissible to give him advice. It was clear to me that the President did not expect and did not want me to do anything inappropriate or improper.

Second, some press accounts suggest that the President and I remember our conversation differently. I do not remember exactly what he said that gave me this impression, but I understood the President to be asking whether I could properly provide advice related to financial institutions regulation. The President and White House Counsel Cutler have recently said that the President's interest was narrower, that he only wanted names of people who might comment publicly on these matters. That is not what I understood, but it may well have been what the President intended. Our exchange on this point was brief, perhaps 30 seconds. It took place in a noisy room with many distractions. We could easily have miscommunicated.

After the seminar, I went back to my hotel room. I was not sure how to followup on the President's question. I had not followed Whitewater closely in the newspapers, and I did not know much about it. Because he is the President, I wanted to be responsive to him. But having practiced law in Washington for 20 years, I understood the importance of being cautious and careful in responding to such an inquiry. I felt I needed some basic information about the subject. I also wanted to get the sense of others about whether it would be appropriate for me to advise the President on this subject. I wanted to give a well-founded and reasoned answer.

My first call was to Josh Steiner at the Treasury Department. As best I can recall, I called him just as a starting point—somebody who could point me in the direction of the right people to speak with about these matters. I think I was also trying to figure out how to reach Jean Hanson, the General Counsel of the Treasury Department. My conversation with Mr. Steiner was extremely brief. As best I remember, Mr. Steiner just suggested that I speak to Ms. Hanson.

I reached Jean Hanson and had another brief conversation. I told her, as I told others I spoke with later, that I did not want information that was not public. I do not remember exactly what Ms. Hanson said, but I understood from her that the Whitewater matter involved a personal loan of the Clintons. I came away with the impression she did not know much about it. I also recall that she seemed to have reservations about the idea of my providing advice to the President. She suggested that I talk to White House Counsel Bernard Nussbaum.

I tried to call Mr. Nussbaum, but I did not get through. Instead, I got passed along from one person to another in the White House Counsel's Office. I am not sure I remember all the people I spoke with in this series of phone calls. I know Cliff Sloan has testified that he spoke with me at some point in this series of calls. This is entirely possible, but I do not recall it. I do recall speaking with Bill Kennedy and Joel Klein.

In my conversation with Mr. Kennedy, I again sought a general sense of what Whitewater was about and whether I could appropriately advise the President about it. I do not remember getting any new information from Mr. Kennedy. I do recall that he, too, seemed to have reservations about my advising the President on this subject. Mr. Kennedy recommended that I speak to Joel Klein.

I believe Mr. Klein was not available when I first tried to reach him, and that he subsequently called me back. I then learned that

he was also attending the Renaissance Weekend. I do not remember clearly whether we finally spoke in person or on the telephone. We were both part of a large informal dinner group that evening, and the conversation could have occurred then, but my best recollection is that we spoke by phone. I do clearly remember that he was very negative about the idea of my advising the President on these matters.

Reflecting on the President's question and the reactions of Jean Hanson, Bill Kennedy and Joel Klein, I concluded that I could not appropriately give the President legal or regulatory advice relating to Whitewater. I felt, in the end, that any effort to provide informed advice could lead me into discussions with the President and others that might be inappropriate for me as a regulator and director of the FDIC.

The next day, I literally bumped into the President and Mr. Klein in the hallway near a seminar room. Without further discussion, we all agreed that I should not provide advice to the President about these matters.

That was the end of it. The President did not ask me to advise him about Whitewater, but rather whether it would be permissible for me to advise him. Upon reflection, within less than a day, we all concluded that I should not. And I did not. Everyone involved, including the President, took great care to avoid any inappropriate actions. No advice was given. No confidential information changed hands.

The third occasion on which I recollect contact with a White House or Treasury official regarding Whitewater—aside from occasional passing references in the course of other discussions—was January 19, 1994. I was concerned about the steady trickle of news stories about Whitewater. I concluded that I could properly offer the White House one piece of advice drawn from my years of legal practice in Washington: disclose everything. I called Margaret Williams, Hillary Clinton's Chief of Staff, to say just that. I had no way of knowing if anything remained undisclosed at that point. I also told her I thought they should put at least one person to work full-time on the matter, if they had not already done so. I do not recall Ms. Williams saying anything other than "thank you." I did not ask for and we did not exchange any information. There were no follow-up communications.

These three occasions—the faxes, some brief discussions at Renaissance Weekend, and a short phone call to Margaret Williams—are the sum and substance of my contacts with the Treasury Department and the White House relating to Whitewater and Madison Guaranty. I have done my best to recall them as accurately and completely as I can. I hope my recollections are useful to you. I will be pleased to answer any questions you might have.

The CHAIRMAN. Thank you Mr. Ludwig. I want to take up the first item in your statement, these FOIA items that somebody sent you unsolicited. When would that have happened? I don't see a date as to when you got that. You sent them over to the White House—

Mr. LUDWIG. Late in November—early December, I think it was early December.

The CHAIRMAN. And so you got them and then you—you do know you sent them over on December 2nd so——

Mr. LUDWIG. They would have been received then the same day. It was December 2nd, December 1st or December 2nd.

The CHAIRMAN. Now, what were these FOIA items?

Mr. LUDWIG. These were two press inquiries, Freedom of Information Act requests, sent to the FDIC. As I said in my statement, they were public documents. I even checked with our Chief Counsel, as best I remember, to make certain they were, in fact, public documents.

The CHAIRMAN. OK. Now I've got them in front of me and you provided them to the Committee. Actually, the White House provided these to us for our work here. One is a letter from Susan Bear of The Baltimore Sun going to a Doyle Robinson at the FDIC, and the other is a letter on the letterhead of The Washington Post by Susan Schmidt to a Mr. Jack Smith, Deputy Counsel, General Counsel of the FDIC.

Now, how often would it have been your practice to get FOIA items and send them on to the White House?

Mr. LUDWIG. This was unusual.

The CHAIRMAN. Is it the only time it ever happened?

Mr. LUDWIG. This is the only time it ever happened.

The CHAIRMAN. So this was a unique event?

Mr. LUDWIG. This was a unique event.

The CHAIRMAN. Why did you feel compelled to do this?

Mr. LUDWIG. Well, as I said, Senator, I determined these were public documents. I had nothing to do with Whitewater or Madison. It had never come up——

The CHAIRMAN. Right.

Mr. LUDWIG [continuing]. At the board, it had never come up at all. Because I had nothing to do with them, but they were public documents, it seemed to me that it was appropriate to send them along to people who might have something to do with them. I certainly didn't. So I sent them on.

The CHAIRMAN. I guess I'm still curious as to why, in the normal course of events, if there is some reason for these people to have these documents, and I guess we ought to talk about—just describe briefly what these documents cover. Don't read them verbatim, but what are the thrust of these two items? Do you remember?

Mr. LUDWIG. I don't have them in front of me, but they're inquiries relating to Madison and Whitewater.

The CHAIRMAN. Well, they cover a lot of things, do they not, related to Madison Guaranty, the Rose Law Firm, the FDIC's lawsuit, various other things that's in The Baltimore Sun letter. I guess when I look at this in the context of this general inquiry that we've been assigned to do here, I'm wondering why, when this is not your normal practice, you would take these two documents and send them out to four different individuals. You send one to the Treasury Undersecretary, you send one to the Chief of Staff, so Mr. Newman, Josh Steiner, then Bruce Lindsey and David Dryer in the White House press office.

You fanned this out in four directions and I'm just wondering what—you say this was not a common practice. What was your purpose in doing that?

Mr. LUDWIG. Well, these were public documents.

The CHAIRMAN. I understand that, but what was your purpose?

Mr. LUDWIG. And as I said, this was a single event in a very busy day. I didn't have anything to do with Madison or Whitewater, so I wanted to send them off. As best I can recollect, I wanted to make people aware that there was press interest in this matter. That's the best I can recollect, as I said in my statement.

The CHAIRMAN. But that was not your common practice? I guess you thought this was a sensitive enough item that once you knew about it you wanted to pass it along. Is that essentially it?

Mr. LUDWIG. Well, as I said, it was something that arrived on my desk unsolicited. They were public documents. I certainly had no reason to handle or deal with them, and I wanted to send them along to people who might deal with them or handle them, but it was not something that was a matter that I'd ever come in contact with.

The CHAIRMAN. Mr. Steiner's diary entries which were given to us which fall within this time period do not mention, they have no reference—not that they necessarily would—of this item, but I had asked whether they did and apparently they do not. I assume if Mr. Steiner had a reference in his diary to this, he would send it to us.

It sounds to me from your chronology as if there was a very quick turnaround when you had this 30-second conversation with the President when he asked if you could properly provide any advice on this matter and you checked around in a hurry and concluded that you could not and should not and then you informed the President of that the next day. Is that the correct summary?

Mr. LUDWIG. That's correct, sir.

The CHAIRMAN. That's all for me at this point.

Senator D'Amato.

Senator D'AMATO. Chairman, Mr. Lindsey—

The CHAIRMAN. Ludwig.

Senator D'AMATO. Mr. Ludwig, I'm just looking at this. Excuse me, but why did you send this to Mr. Lindsey at the White House?

Mr. LUDWIG. Well, I knew Mr. Lindsey was a Senior Aide at the White House, and so that's why I selected him. I mean, this was a very quick turnaround, and I just sent it to people that I thought might have something to do with it or know who did.

Senator D'AMATO. Well, did you know that he was in charge of the—watching the Whitewater situation in particular?

Mr. LUDWIG. No, sir.

Senator D'AMATO. Why did you think the White House would have an interest in responding to a request, a FOIA request to the FDIC?

Mr. LUDWIG. Well, as I said, I knew these were public documents. I knew they had nothing to do with me. I knew from reading the newspaper that Madison and Whitewater were issues of current discussion, and they involved the White House, so I sent them to the White House.

Senator D'AMATO. Well, in one of the requests it says—it makes reference to the FDIC's 1989 lawsuit against and subsequent set-

tlement with Madison accounts, so to that extent, did you ever send them those documents?

Mr. LUDWIG. No, absolutely not. The only——

Senator D'AMATO. Would anybody be entitled to that kind of information? I don't know. I mean, the lawsuit documents of 1989, do you know or is that still——

Mr. LUDWIG. I don't know. I've never seen them. The only documents I've ever seen in relation to this are these two press FOIA inquiries, and that's the only thing I ever passed along.

Senator D'AMATO. Let me just ask you this. Would I be unfair in characterizing your sending these documents or the request, the request for the documents, your dispersal of them to the White House as saying or characterizing it as a "heads-up"?

Mr. LUDWIG. Well, sir, I characterized the way I remember it in my statement and that is that I knew there was press interest and I thought it was appropriate to let them know there was press interest since these were public documents.

Senator D'AMATO. Just one last question. Why did you call Maggie Williams on January 19th to give her your advice and counsel? Why Maggie Williams?

Mr. LUDWIG. I had learned I think from either the newspapers or scuttlebutt or somewhere that she was in charge of the Whitewater matter, and that's why I called her.

Senator D'AMATO. Somehow you got this perception that she was interested or in charge of it. Did you ever speak to her—prior to your call and your advice, did you ever have occasion to speak to her about Whitewater?

Mr. LUDWIG. Not that I recollect. I did try to get her to give her this advice on a couple of occasions. That's reflected in my phone logs which I've provided to the Committee, but to the best of my recollection, I've never spoken to her before or since.

Senator D'AMATO. OK, thank you.

Mr. Chairman, I don't know whether Senator Bond would like to continue on my time or whether it would be better to move over to the other side so he could have a full——

Senator BOND. Why don't we allow the other side to go forward.

Senator D'AMATO. I yield back my time.

Senator SARBANES. Mr. Ludwig, this kind of call you made to Maggie Williams, was in what, January the 9—when was that call?

Mr. LUDWIG. I believe, Senator, it was January 19, 1994.

Senator SARBANES. And what prompted you to make it?

Mr. LUDWIG. Well, sir, as I said in my statement, reading the newspapers day after day, there was a constant trickle of information about Whitewater. I thought hard about what I could say about this and it seemed to me that what I could say that was perfectly appropriate was that everything ought to be disclosed if it hadn't already been disclosed. I didn't know whether it had already been disclosed. As Secretary Bentsen testified this morning, he evidently spoke with Mr. Stephanopoulos and said the same thing. I felt the same way as Secretary Bentsen. After having practiced law in Washington for 20 years, it seemed to me that in this kind of a matter the best thing to do is disclose and I felt it was appropriate for me to say that.

Senator SARBANES. So you felt, given your experience and perceptions, that you might be helpful by calling them and giving them that advice?

Mr. LUDWIG. Yes, sir.

Senator SARBANES. You say in your statement that was the third occasion of contact—

Mr. LUDWIG. Yes, sir.

Senator SARBANES [continuing]. "Aside from occasional passing references in the course of other discussions," and I'd like you to elaborate a little bit on what constitutes "occasional passing references in the course of other discussions."

What is that phrase intended to encompass?

Mr. LUDWIG. Well, sir, you could not, during that period and I think it's true today, meet with anybody whether it's a relative or somebody here in the Congress or in the White House or the Treasury without somebody saying, oh, look, Altman's on the front page or it's Whitewater again or something of that nature. There were not discussions, not a subsequent exchange of nonpublic information—just a word about newspaper or television reports.

Senator SARBANES. So that's intended then to refer to those kinds of references and "passing references" in the course of other conversations?

Mr. LUDWIG. Yes, sir.

Senator SARBANES. I don't need to parse those words very carefully.

Mr. LUDWIG. No, sir.

Senator SARBANES. So apparently we have testimony from some of the people in the Counsel's Office that they talked to you, but you're not certain that you talked to them; is that right?

And after you had this exchange at Renaissance Weekend and before the next morning when you said well, you really shouldn't do that, you talked to a number of people and I'm a little curious as to how they record they talked to you but you don't record—you're not certain you talked to them; is that right?

Mr. LUDWIG. Well, sir, this was like calling almost any Government office. I got passed from person to person. I don't remember all the people I spoke with. As I mentioned in my testimony, Cliff Sloan evidently has testified that he remembers speaking to me and it's entirely possible. I don't remember it, but it's certainly possible. The two people I do remember speaking with were Bill Kennedy and Joel Klein.

Senator SARBANES. And all of these people as you went through them pressed caution or said we don't think you ought to do this; is that right?

Mr. LUDWIG. I remember Jean Hanson, Joel Klein and Bill Kennedy having a cautionary note or tone or saying—I don't remember words—but something that was cautionary.

Senator SARBANES. What do you mean by that?

Mr. LUDWIG. As I say, I don't exactly remember the words, but it would be something on the order of—I wonder whether you should do this. It was a cautionary note or tone. I do remember Joel Klein being very negative. Again, I don't remember words, but he was very negative.

Senator SARBANES. In other words, he said don't do it, I take it.



Mr. LUDWIG. Yes, something to the effect of absolutely don't do it or I wouldn't do it or something like that.

Senator SARBANES. You say you concluded actually before you talked to Klein that you shouldn't do it.

Mr. LUDWIG. No, sir. The President had made this inquiry and I wanted to react, not reflexively, but really consider the question. I wanted to have enough information as a lawyer to be able to react as to whether or not I could provide advice, but after I'd spoken to Mr. Klein and reflected on this situation, I concluded that I should not speak with the President about this matter.

Senator SARBANES. Now, have you recused yourself?

Mr. LUDWIG. Yes, I have.

Senator SARBANES. What is the basis of the recusal?

Mr. LUDWIG. I don't understand the question, sir.

Senator SARBANES. From what have you recused yourself?

Mr. LUDWIG. I think I've provided a copy of the recusal to the Committee. It's a fairly broad recusal, recusing myself having anything to do with the President or Mrs. Clinton in their personal capacity relating to Madison/Whitewater.

Here, I've just been given a copy. It says:

Although I have not had occasion to address any issue concerning the so-called Whitewater matter up to the present and have no reason to believe that I will be involved in any such issue in the future, I've been informed that in connection with the Senate hearings to confirm the nomination of Ricki Tigert as chairperson of the Federal Deposit Insurance Corporation, Ms. Tigert has elected to recuse herself from participation in any such issue. In order to avoid even the possibility of the appearance of a conflict of interest or other impropriety, I have also decided to recuse myself from participating in any official investigation, inquiry, or determination which may come before me in my capacity as Comptroller of the Currency or director of the Federal Deposit Insurance Corporation concerning matters or events involving the President or Mrs. Clinton in a personal capacity.

Senator SARBANES. What is the appearance of a conflict of interest or other impropriety that you perceive that was—is the basis of this recusal? That you're a friend, that you know the President and Mrs. Clinton?

Mr. LUDWIG. If there were a personal matter to come before the FDIC; this recusal would apply to a personal matter, relating to the President or Mrs. Clinton, and I would be recused from any such matter.

Senator SARBANES. Yeah, but why do you feel you need to do that?

Mr. LUDWIG. Well, I knew that there was a great deal of concern on the part of this Committee with respect to Ricki Tigert's nomination and whether or not as a friend of the President and First Lady she should decide matters relating to them personally. And I concluded that even though nothing like that—

Senator SARBANES. What about that? I mean, some Members had that and she undertook that undertaking, of course, she was seeking to be confirmed, but are you and the President lifelong friends from childhood, constantly saw one another and been very close?

Mr. LUDWIG. Not at all.

Senator SARBANES. What's the nature of that? If I know the President and I get appointed to a regulatory job, do I have to disqualify myself if any matter comes before me? This is actually the issue Altman raised where he said—it was an interesting point—

he said the Office of Government Ethics had to some extent been critical of the recusal on the basis that it wasn't legally required, it wasn't ethically required, he went ahead and did it anyhow.

Now, I mean, what's the nature of the relationship? You're not the President's brother, you're not related to him, so what's the nature of the relationship that you perceive has created an appearance that required a recusal? I mean, this is an interesting issue. It's not altogether directly on point, but it does have a bearing on how people conduct themselves throughout the Government.

Mr. LUDWIG. Well, I think that's fair, sir. I'm very cautious by nature and, as a regulator, I think regulators really have to try to achieve the highest standard of ethics and integrity they possibly can. I've certainly tried my best to do that in office. Since this was such a hot topic in the newspapers, the public could be confused as to whether or not there would be any impropriety, and there have been a lot of accusations——

Senator SARBANES. Let's find out what the—I mean, you know the President and Mrs. Clinton.

Mr. LUDWIG. I do know them.

Senator SARBANES. How long have you known them?

Mr. LUDWIG. I met the President when we were students at Oxford, and I knew the President and Mrs. Clinton when we were students at Yale Law School.

Senator SARBANES. And have you seen them frequently over the years?

Mr. LUDWIG. No. Every two years or so we might exchange greeting cards or, share a telephone call or chance meeting.

Senator SARBANES. Would you recuse yourself in matters involving somebody else that you knew exactly on the same basis on which you knew the President? Suppose I'd been at Oxford with you and we knew each other and we went to law school together and we saw each other once in a while over the years, and we changed Christmas cards every couple of years and I had a matter before you; would you recuse yourself in my case?

Mr. LUDWIG. I would. It is a very, very cautious approach. But it seems to me, sir, that given the sort of accusations going back and forth in the newspapers, the kind of innuendos that we have seen and rumors in the press, that this is a case where it makes sense to be hypercautious, but I think one could very well argue it the other way, that a recusal is not necessary.

Senator SARBANES. Well, you don't feel that simply because you knew him and were friends, you wouldn't be able to render a—an objective judgment, do you?

Mr. LUDWIG. I definitely do not, sir. That is, I'm really confident that I can today, or I could then, render a fair judgment irrespective of having known the President over these years, so I don't think it was a matter of impropriety. I think it was a concern about an appearance of impropriety, given the amount of press attention and rumor and innuendo.

Senator SARBANES. All right. Thank you.

The CHAIRMAN. Senator Bond.

Senator DODD. Mr. Chairman, before the Senator begins and I wouldn't—and I'm not suggesting this, we change this point. We

noted yesterday, are we on 10-minute cycles or 7-minute cycles? We are on the 7? Oh.

The CHAIRMAN. We moved to 7 today. We did 10 yesterday, particularly for Mr. Altman, because it was going to be a long day. We've gone to——

Senator DODD. I wanted to make a point because we had a hard time reaching somebody——

The CHAIRMAN. Well, that's one of the reasons why it was a one-day event and we've been going 7-minute cycles today, and that gives people down the line a chance to get into the act more often.

Senator Bond.

Senator BOND. Mr. Chairman, I hope the 10-minute cycle was not the reason for the lateness of the session last night. Let me move forward toward and see if we can stay within the 7 minutes.

Mr. Ludwig, you are here today because you are one of the 40-plus contacts that occurred between the White House and Treasury over the Madison Guaranty case. These contacts begin when the President's friend, Mr. Altman, whom we've spoken about a great deal, took over the agency responsible for investigating Madison Guaranty and they ended about a year later after Mr. Altman recused himself and Mr. Fiske subpoenaed him.

Over the past few days we've had a wide variety of excuses, explanations and we think some questionable evasions as to why the contacts occurred. But I think it's important that we remember the pattern because, although one individual or another may have a plausible explanation for one or two of the contacts, we need to look at them as a whole.

The story is also playing out with the backdrop of Mr. Altman's testimony in which he said there was only one contact and now of course we know there are 40. We are unable to pin down all of those details. For my colleagues' sake, it seems to me reasonable to put the story into some context and point out, for starters, that within a week of Mr. Altman's becoming head of the RTC and hours after his first learning that a criminal investigation of Madison Guaranty had occurred, there were the faxes and contacts with the White House from Mr. Altman's office.

Contacts continued in the fall when Mr. Altman was notified of 9 additional criminal referrals which now also mention the current Governor of Arkansas as well as a distinguished former Senator, and the Clinton 1984 gubernatorial campaign. There was a flurry of activity in October, the bizarre removal of the Chief Investigator Jean Lewis from the case on November 10. There was also action at the Department of Justice when Webb Hubbell and U.S. Attorney Paula Casey both recused themselves. These are issues obviously we will have to get into once we get past this stage of the hearings.

That brings us to you. It was 10 days after the story broke concerning the Whitewater files being removed from Vince Foster's office that Mr. Clinton came to you. They may also have realized that now the White House has a civil case on Madison, and we wonder how these things all play out, and I would like to go back with you to the memorandum, your contemporaneous memorandum. I think you told us early on in your testimony today that you set forth in

your memo to Ed Knight of March 11, your memory at the time as to what occurred. Is that fair?

Mr. LUDWIG. Senator, it was not a contemporaneous memorandum. My memorandum to the Executive Secretary to the Secretary of the Treasury, Ed Knight, was delivered in response to a grand jury subpoena request of the Treasury and of me. So I was recording some months later what had occurred. My memo was written in response to this grand jury subpoena request.

Senator BOND. That was—nevertheless, that was closer to the time than this testimony, is it not?

Mr. LUDWIG. It was closer to the time than this testimony, sir.

Senator BOND. In that one you said that apparently the question was “whether it would be permissible for me as a lawyer knowledgeable about banking law to provide advice and counsel on any of the legal or regulatory issues.” That was a troublesome phrase that was in that memorandum.

Would you care to explain that, that phrase in the memorandum?

Mr. LUDWIG. As I testified here this morning, sir, to the best of my recollection, the President asked me whether I could provide advice. As I understood it, the question related to regulatory, legal advice with relation to financial institutions. As I stated in the March 11th memo and I stated here this morning, the question was whether I could provide advice in that context; that’s how I understood it.

But the one thing I ought to make clear, sir, is that the question was asked in a room of a hundred people listening to a seminar; it was extremely noisy. I think there were probably children there. This is the best of my recollection at that time.

Senator BOND. Again, that’s troublesome, but you contacted members of the White House Counsel’s Office, Ms. Hanson’s office and others, is that correct, in following up on the discussion you had with the President?

Mr. LUDWIG. After having the question posed to me by the President, I wanted to give it considered attention. I could have been reflexive. I mean, the reflexive answer is I’m a regulator, I can’t have any contact. But after all it was the President who posed the question to me. As a lawyer for many years, I wanted to give it considered attention.

Senator BOND. Isn’t that why you have the protection of an ethics officer in the agency? Doesn’t that give you the cover? Nobody wants to tell the President no, but isn’t that why you have an ethics officer, so you make somebody else the fall guy, or woman, if the case may be, to say no, to help you say no?

Mr. LUDWIG. Well, I spoke to the lawyers. Jean Hanson is the Chief Counsel of the Treasury. She is the chief attorney to whom our chief attorney reports. It seemed to me that was the place to start.

Senator BOND. But at that point, did she give you the advice not to carry it further?

Mr. LUDWIG. As I say, sir, she was negative. As I remember it, she had a cautionary tone. She gave me minuscule advice or information about Madison.

Senator BOND. Did she give you any specific ethics advice?

Mr. LUDWIG. No. As I say, she had a cautionary tone, but I do not remember a specific absolutely not or absolutely yes statement. She was cautionary.

Senator BOND. But then even after having done that, you went ahead and made a follow-up call later on. After you said no improper contacts occurred, you made a follow-up call to Maggie Williams' office, and offered them your general advice.

Mr. LUDWIG. Senator, it was clear to me if I were to get involved in a discussion with the President to give advice of whatever kind, I would have a tendency as a lawyer to want to know all the facts and circumstances and that can lead you into areas of impropriety or at least the appearance of impropriety. On the other hand, there are certainly some things one could say that clearly would violate nothing, that would be not inappropriate. It seems to me that giving the advice "disclose everything," which I did with Ms. Williams, not with the President, seems to me to be appropriate.

Senator BOND. I think not only do lawyers have the problem of wanting to know all the facts, they want to give advice and I think that sometimes gets us into trouble. I'm not saying that there is anything wrong with your conduct. I would just say that this is why an ethics counsel, who can be the abominable "no" man, can be held in protection in these situations.

But as I conclude, I would only note that really the tone of the contact to you, contact to you by the President is the one which has set the tone that I think has raised questions throughout this hearing. I appreciate your candor, and I would just say that there has to be a heightened sensitivity to the work and the role of ethics officers in the Federal Government, something different than perhaps in the private sector.

The CHAIRMAN. Thank you, Senator Bond.

Let me just say for the record that I'm now going to include in the record Mr. Ludwig's memo of March 11, his recusal memo of February 24th and the two FOIA requests, number 1183 to 86. Let me also indicate to my colleagues on this side, I've talked to Senator D'Amato and other Senators have questions. They have completed their questioning at this point on this side so when we finish, we'll be able to go on to the next panel unless others indicate otherwise and want to be recognized.

Senator Dodd.

Senator DODD. Thank you, Mr. Chairman.

Let me pick up on Senator Bond's point. I think we may agree here. I don't think it's a question, frankly, of Government. I think it's also true of the private sector and nonprofits. Very few people around this place make any decisions any longer without calling the ethics office; and my fear is what we're doing, the notion of personal responsibility in both public and private life is being relegated to the decisionmaking of somebody else, and if somebody else says it's OK, whether or not we think it is, it becomes permissible, and that becomes the standard by which we conduct our affairs. I think that's permeating our society, and I think it's dangerous. So I think that's the point Senator Bond was making, at least in the sense of governmental affairs, but I think it's also true in other aspects of life as well.

Second, I want to underscore the point Senator Sarbanes was making about these recusal decisions. Senator Ben Nighthorse Campbell made the point earlier today in discussion with Secretary Bentsen that nobody wants to be responsible for anything and any way we can get out of making decisions, we do it.

So I understand what your thinking was here, but we've got to put the brakes on this a bit or, you know, we're not going to have any decisions made. So I just want to underscore that point. I appreciate the fact you have, but as I look at this and look at your testimony today, I don't see any reason why you should have. But you've done it in my view, and I suspect it's done as the old CYA, and I won't explain what CYA is because we're on public airways and I think most of us know what we're talking about here. We just take ourselves out of the picture entirely and I worry about that.

Third, I have no difficulty—it sounds to me that the contact with the President that—I just want you to reemphasize this point. It's your understanding, Mr. Ludwig, that the President of the United States asked you if it was proper for you to give him advice, not for the advice. Would you state again for us, because it's a very important point. It's been raised before. I think it needs to be emphasized. Are you clear about that?

Mr. LUDWIG. Yes, sir, absolutely clear. The President asked me whether I could advise him, that is to say whether it would be permissible for me to advise him. My recollection is clear on this, and I don't think there's anything inappropriate in that.

Senator DODD. I appreciate that. Now, with regard to these FOIA inquiries, you may have responded to this—but I thought I heard you say there was nothing to respond to in these inquiries. There was no information you had at the FDIC that would—excuse me, that required response to The Baltimore Sun or The Washington Post.

Mr. LUDWIG. I would guess, but I don't know, that the FDIC has responded to those inquiries. I've had nothing to do with them. Other than the fact that they were sent to me unsolicited, the only information or the only piece of paper I ever sent off was the inquiries themselves, not any documents, not any response to inquiries, just the public documents, the inquiries, which were, as I say, sent to me unsolicited. Whether the FDIC has responded to those inquiries or not, I don't rightly know. I think there's been some note in the paper that they have.

Senator DODD. These were addressed to the FDIC, both of them were addressed to the FDIC?

Mr. LUDWIG. Yes. They were both addressed to the FDIC.

Senator DODD. There was no request in here that you pass these on to the White House. You made that decision on your own.

Mr. LUDWIG. I made that decision on my own.

Senator DODD. I'm sure you endeared yourself to the White House in retrospect by sending these along. Would you admit, and I say this with respect, this was a pretty dumb idea to send these to the White House? It's not a hard question.

Mr. LUDWIG. As I say, they were public documents that I didn't have anything to do with—

Senator BOXER. Would the Senator yield to me for a second?

Senator DODD. Yes.

Senator BOXER. It is my understanding that if an individual is the subject of a FOIA request, that that individual can find that out. So if an ordinary citizen can find out this information, does the President give up the right to be an American citizen?

Senator DODD. These weren't directed to the President. They were directed to the FDIC.

Senator BOXER. The agency that gets the FOIA request can inform an American citizen if there has been such a request.

Senator DODD. My point is, if you had to do it over again, would you send them down here?

Mr. LUDWIG. I don't know, Senator. They were public documents. I had nothing to do with them. I want to emphasize that I checked with our counsel to make sure that they were public documents, and I'm not sure how I would—

Senator DODD. I'm not going to dwell on it, but it seems to me, the kind of transmissions of those things—lastly, I was intrigued going back to the inquiries that you made, and it sounded to me like you did the right thing calling various people to determine whether or not the questions, and inquiries to you were something you could respond to and you talked to a number of people.

You mentioned you talked to Jean Hanson at the Treasury Department, and I'm particularly interested in that conversation. We've had a lot of talk up here the last several days, as you are no doubt aware, about Ms. Hanson. Now, as I understand it here, she seemed to have some reservations and cautioned you against giving the President advice on this matter. That's your testimony; is that not correct?

Mr. LUDWIG. Yes. She had a cautionary note in her voice, as best I can recollect, and then suggested that I speak with Bernard Nussbaum, the Counsel to the President.

Senator DODD. This was sometime between Christmas and New Year's 1993?

Mr. LUDWIG. This was just prior to New Year's 1993.

Senator DODD. Did Ms. Hanson say to you that at any point before I talk to you, I may have to check with someone here in the Treasury Department? Was there any reluctance on her part to discuss this issue with you?

Mr. LUDWIG. As best I recollect, she didn't seem to know a great deal about the facts.

Senator DODD. That was not my question. Was she reluctant in any way to discuss this matter with you?

Mr. LUDWIG. It was such a brief conversation and really the import of which was to pass me on, more than anything else, to Mr. Nussbaum.

Senator DODD. Did she seem reluctant to talk to Mr. Nussbaum? Did you get any indication she knew Mr. Nussbaum fairly well, that she was comfortable making that suggestion?

Mr. LUDWIG. No. It was a very brief conversation, and I had a feeling she was uncertain as to who to speak with and passed me on to Bernard Nussbaum, that she said just to call him.

Senator DODD. Mr. Chairman, thank you.

The CHAIRMAN. Senator Bond.

Senator BOND. Just a couple quick follow-up questions. I was going over notes as you were talking. You mentioned having reviewed the testimony of Mr. Sloan; is that correct?

Mr. LUDWIG. I did not review the testimony of Mr. Sloan. I don't think I said that.

Senator BOND. I wrote down, that you said you read the deposition of Mr. Sloan.

Mr. LUDWIG. Oh, no, I never said I read the deposition of Mr. Sloan. I am aware that Mr. Sloan was deposed—either from the newspaper or—I'm not sure where—maybe it was because at my deposition, Counsel to the Majority or Minority inquired of me in respect of Mr. Sloan's recollection. I think that was it. But I certainly have never read Mr. Sloan's deposition or testimony or anything like that.

Senator BOND. I just wanted to check on that. And one final point, when the President spoke with you briefly in that crowded room, do you recall him saying anything about a op-ed piece?

Mr. LUDWIG. I don't recall that, sir.

Senator BOND. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Shelby.

Senator SHELBY. Mr. Ludwig, your current job now, and was when you were at Renaissance Weekend is, Comptroller of the Currency?

Mr. LUDWIG. Yes.

Senator SHELBY. As Comptroller of the Currency, you're the top regulator of the national banking system, are you not?

Mr. LUDWIG. Yes, sir.

Senator SHELBY. And before this, you were an active lawyer in Washington, DC dealing with banking regulation work, were you not?

Mr. LUDWIG. Yes, sir.

Senator SHELBY. Before you were nominated and confirmed for that?

Mr. LUDWIG. Yes, sir. I practiced banking law and did some teaching in this area.

Senator SHELBY. Adjunct professor.

Mr. LUDWIG. Yes, that sort of thing.

Senator SHELBY. Where did you teach?

Mr. LUDWIG. I gave lectures at Harvard, Yale and Georgetown.

Senator SHELBY. In regulatory law?

Mr. LUDWIG. Banking regulatory matters.

Senator SHELBY. Now, you knew the President of the United States. I'm not saying you knew him from—you've known him since you were 5 years old and so forth, but you went to Oxford with him and you went to Yale Law School with him.

Mr. LUDWIG. Yes, sir, I did.

Senator SHELBY. And you were involved, to some degree, in his presidential race.

Mr. LUDWIG. I was, sir.

Senator SHELBY. When the President asked you this question, where were you, at Hilton Head?

Mr. LUDWIG. At Hilton Head.

Senator SHELBY. Hilton Head, South Carolina. Were you stunned that he would ask you that? I'm not saying he asked you anything wrong. The fact that he just asked you. Were you—



Mr. LUDWIG. I was a bit surprised.

Senator SHELBY. A bit surprised.

Mr. LUDWIG. It was in the context of a bunch of other questions—a bunch of other chitchat about the seminar.

Senator SHELBY. Did he ask you basically, would it be proper or right? What were the words, if you recall?

Mr. LUDWIG. As best I recollect—I'm really quite clear on this. He asked me whether I could provide advice; whether it would be permissible.

Senator SHELBY. And what did you say?

Mr. LUDWIG. Well, we went on to other chitchat—

Senator SHELBY. What did you say when he asked you that question? Did you ignore his question?

Mr. LUDWIG. The conversation was moving along—

Senator SHELBY. I'm not talking about the conversation. I asked you, when the President of the United States asked you this question, did you answer his question?

Mr. LUDWIG. I did not answer the question at that time, no, sir.

Senator SHELBY. You all just got into a general conversation?

Mr. LUDWIG. Yes, sir. There was a clear impression that we would meet again. I must say I was surprised, and I wanted to consider it.

Senator SHELBY. Let me ask you this—and I think you did the right thing, there's no doubt about that—but why did you wait to do it? Why didn't you just say you couldn't do it or it wouldn't be the right thing to do or tell him again? Couldn't you have done that? Couldn't you have done spontaneously what you ultimately did without checking with anybody?

Mr. LUDWIG. When you're asked a question by the President of the United States—

Senator SHELBY. I understand.

Mr. LUDWIG [continuing]. I didn't want to be reflexive. In other words, I wanted to consider it and consider it seriously, which I did. This symposium took place sometime just before lunch, as I recollect.

Senator SHELBY. You considered it, and you realized that you shouldn't do it, and you didn't do it.

Mr. LUDWIG. That's exactly right. The bottom line is he asked me whether I could provide advice. Within several hours, I concluded that I couldn't. I didn't and nothing went on.

Senator SHELBY. Other than your conversation, your brief telephone conversation with Mrs. Hanson, did you have any other conversation with her at Treasury on this occasion or about this subject?

Mr. LUDWIG. No, sir.

Senator SHELBY. How long did you speak with her over the phone on this?

Mr. LUDWIG. A couple of minutes.

Senator SHELBY. You said you picked up in the conversation, even though a couple of minutes, a little cautionary attitude here.

Mr. LUDWIG. Yes.

Senator SHELBY. Did she use the words "you better be cautious here" or "be careful here" with Mr. Nussbaum?

Mr. LUDWIG. I don't remember the words but it was cautionary, something like that.

Senator SHELBY. Did all roads lead to Mr. Nussbaum from the agencies, everything sort of lead to him to do this or do that? Ms. Hanson said call Mr. Nussbaum. You tried to call him and never got him.

Mr. LUDWIG. Yes, sir, I tried to call him.

Senator SHELBY. He's hard to get to him. But you've seen a lot of roads leading to his office at the White House?

Mr. LUDWIG. No, sir. As I said, this was the sum total of my Madison/Whitewater experience in this testimony and memoranda. And other than her suggestion to speak to Mr. Nussbaum, that was pretty much it.

Senator SHELBY. Mr. Ludwig, is the integrity of the Comptroller's office of utmost importance, not only to the Nation, but to you personally?

Mr. LUDWIG. Absolutely. I think it—

Senator SHELBY. It goes right to the heart of the confidence in our banking system.

Mr. LUDWIG. It's essential that we maintain the highest standards of integrity. I truly believe that.

The CHAIRMAN. Thank you.

Senator Kerry.

Senator KERRY. Mr. Chairman, I think I'll be pretty quick here. Mr. Ludwig, at the time of the meeting at the Renaissance Weekend, your knowledge, I gather from the record, about Madison was pretty scant; is that correct?

Mr. LUDWIG. It was pretty scant, just what I've read in the newspaper, and I didn't follow that very carefully.

Senator KERRY. Did you have any knowledge at all that there might be a potential FDIC civil suit?

Mr. LUDWIG. I don't recollect it. I mean, other than the fact that I had—obviously, when I received these FOIA requests, I learned—

Senator KERRY. Yes, but that's later on. At the time you were at the Renaissance Weekend, it's my understanding you had no knowledge about any potential FDIC involvement.

Mr. LUDWIG. No, sir. The FDIC FOIA inquiries were prior to the Renaissance Weekend. They were December 2nd.

Senator KERRY. So you had some remote notion that something was going on with respect to the FDIC—

Mr. LUDWIG. Some remote notion.

Senator KERRY. Did you connect in your mind the Madison and FDIC?

Mr. LUDWIG. It wasn't an immediate connection, Senator, because Madison is a savings and loan association, as you know. It was regulated by the Office of Thrift Supervision. That's not my office. When it became defunct, it was liquidated by the RTC, the Resolution Trust Company, not the FDIC, which also does some liquidation. So that while I was aware of it, I certainly wasn't focused on it, and it never came before me.

Senator KERRY. And indeed, as Comptroller of the Currency, you did not have jurisdiction of any kind over Madison, did you?

Mr. LUDWIG. No, sir.

Senator KERRY. And you, I take it, had no knowledge that there were 9 criminal referrals that had gone to the Justice Department or that Justice was going to decide whether or not to proceed with those referrals?

Mr. LUDWIG. I had no detailed knowledge of this.

Senator KERRY. The reason I ask this sort of a leading question like that is I want to try to get through this quickly; but also, the record is clear. You've been deposed under oath. Others have been deposed, and I'm just trying to review sort of where we are here and why your connection here, I think, is really minimal, and I want to just try and establish that.

Mr. LUDWIG. I believe it certainly is minimal. I glanced at these FOIA requests. I can't say I studied them. They weren't anything I was dealing with, and I have cursory knowledge from the newspaper.

Senator KERRY. When the President asked you this question initially, did some kind of alarm go off in you? Was there a gulp, I don't know if I could do that, gee, I'm going to check or was there—

Mr. LUDWIG. Absolutely. I absolutely felt that I had a reaction essentially that way.

Senator KERRY. I'm not sure—that's not why you described yourself as surprised.

Mr. LUDWIG. Well, I had this sort of gulp reaction, I guess. This had come sort of out of the blue. We were chitchatting about other things.

Senator KERRY. And the first thing you did as a consequence of that was make a phone call to another lawyer; is that correct?

Mr. LUDWIG. My first call, I think, was to Josh Steiner. I have a vague recollection of that, and I think I was trying to get Ms. Hanson, but essentially my first call was to Jean Hanson.

Senator KERRY. And a point of fact, a lawyer told you this is not appropriate, and you should not have a further conversation on it. Is that not true?

Mr. LUDWIG. Ms. Hanson had a cautionary tone—

Senator KERRY. Not cautionary. A lawyer told you you should not have further discussion on this; is that correct?

Mr. LUDWIG. Joel Klein told me this.

Senator KERRY. Who is Joel Klein?

Mr. LUDWIG. Deputy Counsel to the President.

Senator KERRY. So the Deputy Counsel to the President himself, within hours, said don't talk to him. You can't talk about this; correct?

Mr. LUDWIG. Correct.

Senator KERRY. And at that point it ended. There was no further conversation.

Mr. LUDWIG. Other than bumping in the hall the next day and people agreeing we can't talk about this.

Senator KERRY. The reason I think that's relevant and important, Mr. Chairman, is that the White House has been getting a lot of grief on a continual basis here, and indeed some of it is deserved. There were some wrong judgments, but the record ought to be very clear that it was the White House Deputy Counsel who had good judgment here, who exercised the judgment and who indicated

to Mr. Ludwig, who was already receiving similar information and, in his own testimony, decided on his own not to proceed, that he receive that from the White House.

Let me just ask you a couple of other questions, though. I want the record to be complete. You did your recusal form on February 24, 1994, which was the date of the hearing before this Committee. Were you part of any of the preparations for that hearing?

Mr. LUDWIG. No, sir.

Senator KERRY. Did you know of the hearing?

Mr. LUDWIG. Which hearing are you talking about? Let me make sure——

Senator KERRY. The February hearing where Mr. Altman appeared before the Committee.

Mr. LUDWIG. I was involved in no preparation.

Senator KERRY. Did you know of the hearing?

Mr. LUDWIG. Maybe I learned about it in the newspaper, but I didn't have any——

Senator KERRY. Is it a coincidence that your recusal occurred on that day?

Mr. LUDWIG. An utter coincidence.

Senator KERRY. Did you have any conversations with Mr. Altman regarding Madison Guaranty prior to the hearing?

Mr. LUDWIG. No, sir.

Senator KERRY. Did you have any with him subsequent to the hearing?

Mr. LUDWIG. No, sir.

Senator KERRY. I don't have any further questions, Mr. Chairman. Thank you.

The CHAIRMAN. Senator Bryan.

Senator BRYAN. Thank you very much, Mr. Chairman.

Mr. Ludwig, unlike some of the other witnesses who have appeared before us, I find that your testimony is entirely credible. You're kind of caught off guard, asked a question, initial reaction is I'm not sure I ought to be responding to this. You got legal advice and said you shouldn't, you didn't. I don't know how we can hold you to a higher standard than that.

Mr. LUDWIG. Thank you, Senator.

Senator BRYAN. That is my own sense. And with respect to the decision to recuse yourself, we're operating in an environment that's gone far beyond whether one ethically is required to recuse himself or herself because of some requirement of law or some regulation. I mean, what has dominated so much of the public policy debate in this city and around the Nation in terms of propriety of conduct and public officials is a new standard that has taken maybe even a more significant role, and that is the "appearance of impropriety."

You knew the President, although the relationship was not close. Had you not chosen to recuse yourself, I'm sure you would have been criticized for not having done so. I think you erred on the side of caution. You did not have to do so. You did so. It is very hard for me to criticize you on that basis, and that's all I have to say, and I wish you well in your responses.

Mr. LUDWIG. Thank you very much, Senator.

The CHAIRMAN. Senator Boxer.

Senator BOXER. Thanks, Mr. Chairman. Mr. Ludwig, I would like to associate myself with the comments of my colleague from Nevada, Mr. Bryan, and tell you that I think you reacted in a very human way. I think that you've told us in great detail every single thing that you can think of remotely related to this, and all I can say is I've never seen a 30-second incident blown out of proportion more than this incident. You would have thought the whole world stopped and listened in breathlessly to your answer. Just so I'm clear and the American people are clear, our President never asked you any facts about the Whitewater/Madison case, did he?

Mr. LUDWIG. No, ma'am, not at all. No, he did not.

Senator BOXER. Did he press you when you really didn't respond to his request? Did he say I really need you to help me with this?

Mr. LUDWIG. Absolutely not.

Senator BOXER. And when you bumped into him and this conversation took place, he never again asked you about it?

Mr. LUDWIG. He never again asked me about it, absolutely not.

Senator BOXER. And the two White House lawyers that you clearly remember speaking with were unequivocal with you, they said this was not a good idea and don't do it; is that correct?

Mr. LUDWIG. Mr. Kennedy I remember being cautionary, and Mr. Klein was absolutely negative.

Senator BOXER. Mr. Klein did not equivocate?

Mr. LUDWIG. He did not equivocate.

Senator BOXER. I also want to make a point on this Freedom of Information Act request because I've done a little more research on it. There is nothing confidential about the fact that there has been a request for information. In fact, many agencies keep logs on the fact that a FOIA request has been made, and as I've said, it is my understanding that Americans have the right to know if a FOIA request is made. And frankly, if anybody FOIA's information about one of us, let's say a newsperson contacts an agency to find out information, correspondence that any one of us may have written, many times, those agencies as a courtesy, will inform us just to let us know.

So the fact that you did let people in the White House know, it seems to me was not an unethical thing to do and I just want to point that out. So you spoke to the President for 30 seconds. Nothing ever came of it. You recused yourself because of the appearance of a conflict, not that you felt in your heart there was a conflict, but there was an appearance, and frankly, I think the little back and forth you had with Senator Sarbanes on this is worth noting because I think it puts Mr. Altman in a better light. Because he did think about this back and forth, and I think there's something we need to all look at.

If every single person who knows the President—and I'm not just talking about this President, any President—says my God, I better get out of a decisionmaking responsibility if anything connected with him comes across my desk, we may have no one taking responsibility. I mean, some guy could say, I saw the President on TV and I liked his smile and now I feel I'm prejudiced or I like the First Lady's new hair style and gee, I don't know, I might be prejudiced so I better not deal with it.

So I think this issue of recusal does cut both ways, but I have to say to you on a human level that I think you did the right thing for yourself. In other words, the answer lies in your heart. If in your heart you're worried about it, then I think you did the right thing.

Now, that's me speaking, and I'm not an attorney, and I'm looking at it just from a human perspective. So I want to thank you for coming forward. I thought it was good when we confirmed you. I'm doubly happy we did.

Mr. LUDWIG. Thank you very much, Senator.

The CHAIRMAN. Senator Moseley-Braun.

Senator MOSELEY-BRAUN. Thank you, Mr. Chairman. Again, I'd like to associate myself with the Senator from Nevada's remarks, and I think it's well put and well taken with regard to Mr. Ludwig. You have had the unfortunate experience of sitting through a Senate committee hearing over a 30-second passing conversation, but it happened to be a conversation with the President of the United States around something this Committee has an interest in. And so we appreciate your being here to tell us that you knew nothing.

But there is one point for the record, Mr. Ludwig, that I think ought to be clarified. And that is that your agency has no relationship with the matters being considered by this Committee.

Mr. LUDWIG. Yes. My primary responsibility is as Comptroller of the Currency. We regulate national banks, and Madison is not a national bank. It's a savings and loan.

Senator MOSELEY-BRAUN. Well, I think again, just for the record, I think that's important to note and, again, thank you very much for all your good work and, actually, the fact that you were so much out of the loop on all of this, I think, is demonstrated most clearly by the fact that precious few of our colleagues are even here to question you on this matter. So I think it speaks well of your testimony previously and the fact that again, we really have no questions of you, I think, of any importance at this time.

The CHAIRMAN. Senator Murray. Senator Sasser.

Senator SASSER. Mr. Chairman, I have read Mr. Ludwig's statement, and I don't have any questions of him at this time.

I thank you for appearing, Mr. Ludwig.

The CHAIRMAN. Mr. Ludwig, I have only one and I think we can dismiss you and call our next panel. And that is it was a little hard to read these two Xerox copies of these FOIA items. Did you read them at the time?

Mr. LUDWIG. I glanced at them. I can't say I studied them.

The CHAIRMAN. You must have known what they said—

Mr. LUDWIG. I knew what the subject matter was, certainly.

The CHAIRMAN. You testified earlier, the only time you've ever forwarded the FOIA's to anybody, to your memory, was this one time?

Mr. LUDWIG. These are the only FDIC FOIA's that were sent to me.

The CHAIRMAN. I understand that. That's what makes it partly significant in my mind and that's why I want to satisfy myself on a couple of points here. But they're quite different. The one from The Washington Post has different content from the one from The Baltimore Sun. In The Baltimore Sun one, I was struck as I read

it because some of it relates to old information in the past, in the late 1980's. But then there's this paragraph from this Washington correspondent who sent this.

It says "I am gathering information on Madison that is of current interest to the public because of current investigations into its dealings and its officers." When you read this memo, was that the first time you knew about that?

Mr. LUDWIG. Yes, sir.

The CHAIRMAN. Do you remember that popping out to you when you read the memo?

Mr. LUDWIG. You know, sir, these came to me in the midst of a busy day and I did not give this a great deal of focus, except to find out that they were public documents. I was very clear on that, and when I found out they were public documents, I passed them along.

The CHAIRMAN. You had just enough of a recollection to be able to say to me that you did not know that before you saw this memo.

Mr. LUDWIG. I really had not followed Whitewater or Madison at all, except in a very cursory way in the papers.

The CHAIRMAN. I know. I have great respect for you. We've had a lot of problems with witnesses that move back and forth on these questions. I want to ask a straight question, get a straight answer and then we can finish.

Mr. LUDWIG. Sure.

The CHAIRMAN. That is, I understood you to just say that the first time you were aware that there might be current investigations into the dealings and officers of Madison was when you got this FOIA document. That's what you just said a minute ago. Was that correct or incorrect?

Mr. LUDWIG. Well, sir, there has been so much in the newspaper and there's so much on the television that it's awfully hard to be precise with a recollection. I would have had no knowledge at all except that I might have glanced in the paper—there might have been a passing reference to it, but this was essentially the first time I focused on it at all.

The CHAIRMAN. As nearly as you know, this is when it came to your attention?

Mr. LUDWIG. Yes, sir.

Senator KERRY. Mr. Chairman.

The CHAIRMAN. Yes.

Senator KERRY. I'd like to ask one question in his capacity as Comptroller of the Currency more than this other topic, but did you have a position with respect to Congress extending the statute of limitations for purposes of gaining recoveries and civil suits? Did you think we ought to extend it?

Mr. LUDWIG. I think I remember sending a letter in favor of extending—

Senator KERRY. Did you have a position with respect to whether or not the standard should exclude negligence and gross negligence and be limited to fraud?

Mr. LUDWIG. As I say, I vaguely remember—

Senator KERRY. I mean currently, right now. We've just been discussing this in the context of the Interstate Banking Bill, and I'm just curious whether you've had a position on this.

Mr. LUDWIG. Let me get back to you on whether or not there's an official position of the agency on this. We have not taken—

Senator KERRY. The RTC commented on it recently, and that's why I wondered if you had, because obviously there's a great issue of how much recovery we're empowering ourselves to receive with respect to which standard is being applied.

Mr. LUDWIG. I guess we haven't sent a letter out on it.

Senator KERRY. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. With no other Senator seeking recognition, let me thank you, Mr. Ludwig, for your appearance here today and for your testimony and we'll excuse you at this time.

Senator SHELBY. Mr. Chairman? Not about him.

The CHAIRMAN. You're excused, Mr. Ludwig.

Senator Shelby.

Senator SHELBY. Mr. Chairman, as we get into this next panel, which I believe is an important panel, all of them are Deputy Counsel or Associate Counsel at the White House, is it possible for you to consider letting us go 10 minutes instead of 7? That would be up to you because it would keep us from breaking it up. We're not there yet but—

The CHAIRMAN. I'm wondering if we're going to do that—

Senator SHELBY. That would be up to you.

The CHAIRMAN. I'm open on the issue.

Senator SHELBY. It worked yesterday pretty—

The CHAIRMAN. Can I have the attention of the Members down at the end of the table? Senator Shelby has just offered a suggestion that for this panel of witnesses we go back to the 10-minute questioning periods. Now, there are pluses and minuses with that, as we all know. It gives longer for a line of questioning but people at the end of the table have to wait longer to get their turn. One way to change that would be to start in reverse order, go with 10 minutes and start at that end of the table and work back up. I would be amenable to doing that and going to the 10 minutes if that's a fair way to do it.

Senator SHELBY. Mr. Chairman, it keeps us from breaking up our questioning when we had the very important witnesses and we were getting into very substantive matters and it kept us from breaking our thought pattern.

Senator MURRAY. Mr. Chairman, I appreciate the concern that Senator Shelby has raised and I also appreciate your offer to let us start. However, I'm totally happy with you starting in the middle of the table down there, but I would like to see it left at 7 minutes. We've always had the opportunity to come back and have people ask questions again. It's never been a problem but when we go to the 10 minutes, it is literally 4½ hours before the end of the line sees the questioning.

The CHAIRMAN. That's part of the problem, and I realize that after we change, when you just think about it mathematically, if you go from 7 minutes to 10, and you're adding 3 on top of 7, it's almost a 50 percent increase, so what happens is it does stretch it out—

Senator SHELBY. Mr. Chairman—



Senator MURRAY. Mr. Chairman—

Senator DODD. One of the points that's worth making, and it's sort of like with recorded votes around here, the leadership tries to hold us to 15 minutes but we know we get there a little late. Seven minutes, you've been very generous, I think, in making sure that Members could complete their question, a response was forthcoming. Generally I think, the 7 minutes, when you complete the answers have run closer to 10. When you get to 10, you run closer to 13. So I think sticking to the 7—

Senator SHELBY. Mr. Chairman, I'd like to say this if I can be recognized. I sympathize with the Senator from Washington because just a few years ago I was at the end of the Banking Committee, and 7 is OK with me. It will have to be, but I hope the Chairman will use his discretion with the gavel as the Senator from Connecticut alluded to.

The CHAIRMAN. Which way? Would you like me to gavel people right down at 7 or allow people to complete their—

Senator SHELBY. Not this Senator anyway. Thank you, Mr. Chairman.

The CHAIRMAN. Just the other Senators. I understand.

[Laughter.]

I think we've debated that. Let's go with the 7 minutes. Let's see how that works. Let's call the next panel to the table and let me again introduce who they are. If they're present in the room—all right. They're here in the building and will be escorted to the room. Let me at least acknowledge who they will be as they're in transit to the room and they can take their seats and we'll take their statements and begin.

Our panel this afternoon is going to be comprised of four individuals: Mr. Joel Klein, who is the Deputy Counsel to the President at the White House; Mr. Neil Eggleston, who is the Associate Counsel to the President at the White House; and two other individuals also carrying the title of the Associate Counsel to the President, Mr. Clifford Sloan and Ms. Beth Nolan. So when they come to the room we'll have them seated. I'll administer the oath. We'll take any statements any of them have and we'll begin.

[Pause.]

Let me add a note here as we're waiting for our four witnesses to arrive and take their seats, and that is, this is a point in our hearings where we're now moving into a different area of Government. We have been hearing from people in the Treasury Department since we started on Monday of this week and in the other agencies. We are now about to hear from our first White House witnesses and so in a sense, we're crossing into that zone. We also earlier, of course, heard from the RTC but this now takes us to White House personnel, so we're moving into that phase of our discussion and into our inquiry here.

Let me ask the four of you if you would stand, please, to take the oath. Do you swear the testimony you're about to give is the truth, the whole truth and nothing but the truth, so help you God.

The WITNESSES. I do.

The CHAIRMAN. I understand that Mr. Klein is the senior person at the table—that you have a statement that you want to make

and then some of the others—I gather some of the others may have as well.

Mr. Eggleston, do you have one?

Mr. EGGLESTON. I do.

The CHAIRMAN. Mr. Sloan?

Mr. SLOAN. Yes.

The CHAIRMAN. Ms. Nolan?

Ms. NOLAN. I do.

The CHAIRMAN. You all have statements, so we'll start with you, Mr. Klein, and we'll come down the table.

### **TESTIMONY OF JOEL I. KLEIN, DEPUTY COUNSEL TO THE PRESIDENT**

Mr. KLEIN. Thank you, Mr. Chairman.

Mr. Chairman and Members of the Committee, my name is Joel Klein and since December 1, 1993, I have served as Deputy Counsel to the President—first under Bernard Nussbaum and then under Lloyd Cutler. My only direct involvement in any of the so-called White House-Treasury contacts relates to the matter that Mr. Ludwig just testified about.

In late December of last year, my family and I were attending a Renaissance Weekend in Hilton Head, South Carolina, at which the President was also in attendance. At about 4:00 p.m. on December 30th, I received a call from Associate White House Counsel, Neil Eggleston, who stated that Eugene Ludwig, the Comptroller of the Currency, had called Cliff Sloan, also an Associate White House Counsel, and requested information concerning the Whitewater/Madison Guaranty matter, indicating that the President had asked to speak to him about it.

Mr. Eggleston said he and Mr. Sloan thought that even though Mr. Ludwig was not involved in the matter, it would be better that the President not talk to Mr. Ludwig, given his position as Comptroller. I agreed and told Mr. Eggleston that I would take care of it.

I then went to see the President who was at the time at a Renaissance session and after the session I took him aside and I said that my office had been called and had indicated to me that Mr. Ludwig had requested information so that he could talk to the President about Whitewater. The President responded to me that Mr. Ludwig must have misunderstood him because he had only wanted to ask for the names of people knowledgeable in banking and real estate who might be able to explain Whitewater to the public in simple terms.

This matter had been much in the news at that time and the President said to me that he was concerned that it was not being fairly understood. I replied that even that kind of innocuous conversation could subsequently be misconstrued and that it would be preferable if the President had no discussions of any sort with Mr. Ludwig about Whitewater. The President agreed and asked me to so inform Mr. Ludwig.

I returned to my hotel room, and I called Mr. Ludwig, whom I had not previously met. He was not in his room so I left a message. Later that evening, I met Mr. Ludwig by chance. I took him aside, explained that I had learned of his call to Mr. Sloan, and that I

had talked to the President, who had decided that the two of them should not discuss anything about Whitewater. And I believe that was the end of the matter.

My only other involvement in these matters came about in response to Roger Altman's February 24, 1994 testimony before this Committee. On the following day, Friday the 25th, Cliff Sloan came to my office and told me that although Mr. Altman had said there was only one meeting between White House and Treasury officials concerning Madison, Mr. Sloan was aware of two additional meetings and several phone conversations with Jean Hanson that had taken place in late September through early October, 1993, prior to the time I had joined the Counsel's Office.

In addition, I had previously learned from Mr. Nussbaum, in a conversation that occurred approximately one week after the February 2nd meeting, that Mr. Altman had raised the issue of his recusal at that February 2nd meeting. The press accounts on February 25th, quoting Mr. Altman's testimony, made no reference to the recusal. Although I had no information about Mr. Altman's knowledge, I was concerned about these omissions in his testimony.

On Monday, February 28, 1994, when Mr. Nussbaum returned from an out-of-town trip, I raised these concerns with him. After he and I discussed the matter, Mr. Nussbaum asked me to talk to John Podesta, Staff Secretary, who was already aware of these issues, having discussed them previously with Mr. Eggleston. Mr. Podesta subsequently met with several members of the White House staff, including myself, to decide what actions would be appropriate in this occasion. After these discussions, Mr. Podesta called Mr. Altman and relayed our concerns about his testimony.

Mr. Chairman, that sums up my involvement in these events. I will be glad to amplify in response to your questions. Thank you.

The CHAIRMAN. Thank you, Mr. Klein.

Mr. Eggleston.

#### **W. NEIL EGGLESTON, ASSOCIATE COUNSEL TO THE PRESIDENT**

Mr. EGGLESTON. Thank you. Mr. Chairman, my name is Neil Eggleston. I'm an Associate Counsel to the President. I started working at the White House in September 1993, shortly before the events that are the subject of these hearings began.

Mr. Chairman, I've spent a large portion of my professional career in public service. I am proud of that public service, and I am proud that I have now worked in all three branches of Government. In the late 1970's, I served as a law clerk to two Federal judges, including the Honorable Warren E. Burger, when he was Chief Justice of the U.S. Supreme Court. From 1981 through 1987, I was an Assistant U.S. Attorney in the Southern District of New York. I left that job in 1987 to work for the House of Representatives as Deputy Chief Counsel of the House Select Committee investigating the Iran-Contra affair.

As previous testimony before this Committee has now made clear, I was involved in some of the contacts between the Treasury Department and the White House in this matter. As to each of these contacts, I was acting in my official capacity, assisting others in responding to press and congressional issues.

The first meeting that I recall attending with members of the Treasury Department occurred on October 14, 1993.

As I recall, that meeting related to press inquiries that the Department of the Treasury had received about criminal referrals on the Madison matter. Those press inquiries were apparently prompted by detailed leaks from someone in the RTC to the news media, including the fact that the Clintons' names appeared in the referrals.

I do not believe that I learned any information during that meeting that was not prompted by those press inquiries. And indeed, leaks from the RTC appeared a few weeks later in articles in The Washington Post and The New York Times. I have no reason whatsoever to believe that any White House official took any steps to influence the RTC based on the information that the White House received concerning the criminal referrals.

I also participated in the February 2, 1994 meeting with Mr. Altman and others in the White House. During that meeting, I learned nothing whatsoever about the substance of the RTC civil investigation into Madison. The meeting principally concerned the procedures the RTC would follow in deciding whether to bring civil actions or to seek a tolling agreement to prevent the running of the then-applicable statute of limitations.

With regard to the subject of Mr. Altman's consideration of the recusal issue, I recall that was discussed during the meeting, and I recall that three points were made. First, that if Mr. Altman had a legal or ethical obligation to recuse himself, he would do so immediately. Second, that regardless of whether he formally recused himself, he was going to be recused de facto since he stated that he would follow whatever recommendation was made to him by the career officials at the RTC. And third, at the conclusion of that meeting, the decision of whether Mr. Altman should or should not recuse himself was left entirely up to him.

Finally, with regard to the February 24, 1994 RTC oversight hearing before this Committee, I participated with others in the White House in an effort to ensure that Mr. Altman give a full account of the White House-Treasury contacts.

Mr. Chairman, I have been subject to a deposition of more than several hours duration by the staff of this Committee, and I have discussed with them in that deposition in great detail my knowledge of the White House-Treasury contacts. I am prepared to answer any questions that any Member of this Committee may have of me. Thank you, sir.

The CHAIRMAN. Thank you, Mr. Eggleston.

Mr. Sloan.

#### **CLIFFORD M. SLOAN, ASSOCIATE COUNSEL TO THE PRESIDENT**

Mr. SLOAN. Mr. Chairman and Members of the Committee, my name is Clifford Sloan. I want to thank you for the opportunity to appear today before this Committee. I have been an Associate Counsel to the President since June 1993.

In the course of my duties in the White House Counsel's Office, I was contacted by officials of the Department of the Treasury in connection with press inquiries and interest in Madison Guaranty Savings & Loan. These conversations consisted of a brief mention

by Jean Hanson, the General Counsel of the Treasury, after a meeting at the White House on a different subject on September 29, 1993; a few subsequent telephone calls from Ms. Hanson in the days thereafter; and a meeting of White House and Treasury officials on October 14, 1993. A few months later, on December 30, 1993, the Comptroller of the Currency, Mr. Eugene Ludwig, also called me briefly concerning Madison.

As I know you are aware, I recently spent several hours in a deposition with both the Majority and Minority staff of this Committee, answering their questions about this matter. And of course, I will be happy to answer any questions here today as well.

Before I do so, I would like to make just a couple of brief points.

Neither I nor anyone else in the White House ever sought to influence or even to comment upon the decision to refer the Madison matter to the Justice Department for further investigation, nor did I or any White House personnel ever seek to influence or comment about the manner in which the referral was worded or who was mentioned in it.

Likewise, to my knowledge, no Treasury or RTC official ever sought or invited any comment by the White House at any time about whether a referral should be made or what form it should take. From the first mention of the Madison referral by Ms. Hanson on September 29, each of these conversations was in the context of actual or potential press interest in the matter. I will be happy to help the Committee in any way I can. Thank you.

The CHAIRMAN. Thank you very much.

Ms. Nolan, we'd be pleased to hear from you now.

#### **BETH NOLAN, ASSOCIATE COUNSEL TO THE PRESIDENT**

Ms. NOLAN. Mr. Chairman and Members of the Committee, my name is Beth Nolan. Since February 1993, I have been Associate Counsel to the President. I also serve as the Alternate Designated Agency Ethics Official for the White House; the Counsel to the President serves as the Designated Agency Ethics Official. While serving in the White House, I am on leave from my position as a law professor at The National Law Center, George Washington University, where I have taught courses in legal ethics, Government ethics, and constitutional law. Before I began teaching, I served for 4 years, from 1981 to 1985, as a staff attorney in the Office of Legal Counsel of the Department of Justice.

As alternate ethics official, my responsibilities include matters arising under the conflict of interest laws and the standards of conduct, as well as other matters concerning Administration ethics policy. My job involves frequent consultation with ethics officials throughout the Executive Branch.

My only contacts with a Treasury official on this matter fell into this area of consultation. I had several telephone conversations with Dennis Foreman, the Designated Agency Ethics Official of the Department of the Treasury. I spoke with Mr. Foreman initially at the request of Bernard Nussbaum, then Counsel to the President, regarding the recusal standards applicable to Presidential appointees as they affected Roger Altman, Deputy Secretary of the Treasury and Interim CEO of the Resolution Trust Corporation.

Mr. Foreman and I discussed the general standards, and he told me that he intended to contact Art Kusinski, the Designated Agency Ethics Official of the RTC, and Steven Potts, the Director of the Office of Government Ethics, to evaluate the recusal issue. This made clear to me that a decision process was in place in which the recusal decision would receive serious consideration by the appropriate officials.

It is my recollection that I had a brief phone call with Mr. Nussbaum in which I reported these matters to him, and that I received no follow-up instructions to do anything further. Mr. Foreman later advised me he had been in contact with both the RTC and OGE and that a legal memorandum had been prepared and forwarded to Mr. Altman setting forth the standards applicable to his recusal. These phone calls are the total of my contacts with the Treasury on this matter.

My conversations with Mr. Foreman were fully consistent with the duties of a White House ethics lawyer, and, indeed, the Director of the Office of Government Ethics has determined that they were "similar to the types of discussions that take place daily between Executive Branch ethics officials and the White House ethics expert on matters involving Presidential appointees."

I will be happy to answer your questions.

The CHAIRMAN. Thank you.

Mr. Eggleston, let me start with you. On March 1, 1993, you were serving as Associate Counsel to the President and as I understand it, you reported to Bernie Nussbaum, who was at that time Counsel to the President; is that right?

Mr. EGGLESTON. Sir, it was March 1, 1994. I didn't start in the White House until September 1993.

The CHAIRMAN. Let the record make that correction, 1994. At that time in 1994, March 1, you would have been reporting to Bernie Nussbaum, Counsel to the President; is that right?

Mr. EGGLESTON. Yes, sir.

The CHAIRMAN. Did you also report to Harold Ickes, who was Deputy Chief of Staff to the White House?

Mr. EGGLESTON. I did not report directly to Mr. Ickes. On an as-needed basis, I provided legal advice or support to him. He was not my direct support—excuse me, direct report.

The CHAIRMAN. Did Mr. Ickes assign you a task of writing a memo concerning the Rose Law Firm?

Mr. EGGLESTON. He did.

The CHAIRMAN. Tell me what you were specifically assigned to do in that memo.

Mr. EGGLESTON. I believe that that assignment came sometime certainly after the February 24th hearing, which took place before this Committee. I don't recall whether it was Friday, Saturday or Sunday. It was before the date of the memo—the date of my memo is actually February 28th. I think I wrote this sometime over the weekend.

Mr. Ickes essentially asked me if I would prepare a memo on where things stand now. A number of things had occurred sort of at the hearing that I think changed between the hearing and the following day that changed where things stood—

The CHAIRMAN. Let me stop you. You say "where things stand." What "things" are we talking about?

Mr. EGGLESTON. Probably the easiest way for me to do it, I do not have a real clear recollection of exactly what he asked me to do, but I'm fairly confident that my memorandum responded to whatever it was that he asked me to do. I think that he asked me, as I recall, generally to set forth where the matter stood with regard to the Rose Law Firm, which had frankly, Mr. Chairman, been the matter that had dominated, as I recall, 75 percent of the hearing that took place here on February 24th.

The CHAIRMAN. Are you in a sense conveying the notion that you think that the hearing on the 24th was the precipitating event that caused you to be detailed to prepare this memo?

Mr. EGGLESTON. I think it was, sir.

The CHAIRMAN. Now, in the final paragraph of the memo, it deals with who will be the decisionmaker on whether to bring a civil action arising out of the failure of the Madison Guaranty. Who instructed you to deal with that issue?

Mr. EGGLESTON. I don't think I received a specific instruction to deal with that issue. I think I was asked only to set forth sort of where the civil matter stood after the hearing and after Mr. Altman's recusal on February 25th. I did not get—as I recall, I did not get this level of instruction about what should go in this memo.

The CHAIRMAN. Where did you get the information that you put in the memo?

Mr. EGGLESTON. Well, let me just go through it. The first sentence about "we intend to nominate a person for the position of CEO within the next few weeks," I believe I learned that from Mr. Nussbaum sometime between the—I don't actually know, but sometime obviously before the 28th. I think the rest of it is pretty much public information. It's my analysis of how that issue may play out through the confirmation process.

The CHAIRMAN. When you finished the memo, do you know what happened to it next? Was there a presentation of it, discussion of it? What followed?

Mr. EGGLESTON. I gave it to Mr. Ickes, and I don't know what followed after that. I don't recall discussing it with Mr. Ickes after I provided it to him.

The CHAIRMAN. You got no feedback whatsoever?

Mr. EGGLESTON. Not that I remember.

The CHAIRMAN. No follow-up questions, no—

Mr. EGGLESTON. I don't think so. Can I correct that just for a second?

The CHAIRMAN. Yes, sure.

Mr. EGGLESTON. It's possible that he and I discussed some of these issues. I want to be as precise as I can.

The CHAIRMAN. I appreciate that.

Mr. EGGLESTON. It's possible that he and I discussed the issues here on more than one occasion. I can't really remember whether I discussed it—the final product with him after I provided him the final product. That I don't quite remember.

The CHAIRMAN. What would the meaning be up on the front page of the memo where in the right-hand corner it says "revised" in brackets?

Mr. EGGLESTON. Actually—I don't know whether I gave him a draft of it and he talked to me about it. When I corrected myself, that's what I was thinking about. I can't remember whether I gave him a draft and he looked at it and told me that I hadn't covered some issues that he wanted me to cover or whatever. I think that's what I remember. I don't have any specific recollection, and that's not—I don't mean that as a word of art. I don't have a recollection of how it got to say "revised." That's a logical explanation.

The CHAIRMAN. Would it be fair for us to assume this was the final version, the one we have?

Mr. EGGLESTON. This is the final version.

The CHAIRMAN. Now, I guess the question that stands out, among other things, is why would it be appropriate for you as a General Counsel for the President to be spending your time analyzing a possible conflict of interest of the Rose Law Firm in its representation of Madison Guaranty?

Mr. EGGLESTON. Sir, this had been a matter of enormous public and, frankly, congressional interest. As I recall the hearing on February 24th—and I attended that hearing—really on the Republican side, the Rose Law Firm issue, the involvement of Mrs. Clinton in that particular issue, whether she had billed, whether she hadn't billed; whether she had a conflict essentially dominated that entire hearing.

The CHAIRMAN. Here's my point. Wouldn't private attorneys normally be the people who would gin up that kind of memo. Wouldn't that normally be done in a private law firm by private attorneys?

Mr. EGGLESTON. It may well have also been done in a private law firm by private attorneys, but I thought there was an official function for this. We were facing at the time a possibility of a similar oversight hearing on the House side. I think as of the time of your hearing, shortly after your hearing, I think, that the House hearing had been canceled. But as of the time of your hearing, I think the House hearing had not been canceled, and it was a matter of enormous public interest that the White House was getting questions on a more than daily basis and it was a matter of congressional interest and I thought in those circumstances it was appropriate. It may well be that the Clintons' private counsel did a similar kind of analysis addressing their own sort of personal issues. This is broader than that.

The CHAIRMAN. I'm glad to have your answer on the record.

Senator DODD. Mr. Chairman, could I ask a question?

The CHAIRMAN. In the time I have—you'll be up quickly. I have one other topic and I have one minute to do it. I want to go to the meeting in which Mr. Altman came over to the White House and indicated that he was preparing—he had reached the decision to recuse himself in the Madison case, and apparently Mr. Nussbaum expressed a very strong concern about that. Were you there at that meeting?

Mr. EGGLESTON. I was, sir. That does not reflect my recollection of the meeting.

The CHAIRMAN. That's what I'd like to hear, is your recollection.

Mr. EGGLESTON. Sir, my recollection and, again, where this came out was in Mr. Altman's first sentence when he turned to the recusal issue. I didn't know and I don't think anybody there knew



he was going to start talking about this issue. My recollection is not that he told us that he had decided to recuse himself. My recollection is that he told us he was considering recusing himself. He was thinking about recusing himself. I think I saw his testimony yesterday. I think he says that he said he was inclined to recuse himself. It was not my recollection that he told us he had decided to recuse himself.

The CHAIRMAN. I asked earlier if we had last night's transcript. Because we went so late, it's not typed up in an index in the way we can refer to it, but my memory, his testimony was to us that he had reached a decision before he went to that meeting and did communicate that decision, so there's a bit of a difference of opinion as to what happened. We'll have to try to pursue that.

Mr. EGGLESTON. In any event, as I say, whatever he said, it came out in the first sentence and I don't think any of us knew that sentence was coming.

The CHAIRMAN. You mean that was the first thing up in the meeting?

Mr. EGGLESTON. No, that was the first thing up when he finished the statute of limitations issue. He turned to a new issue we were not anticipating.

The CHAIRMAN. I don't want to go past my time.

Senator DODD. Just a point of inquiry because I'm curious as to whether or not we're going to go into this.

Last evening, I believe you indicated that this memo going to the Rose Law Firm was beyond the scope when the issue was raised last evening, and I'm just curious as to whether or not it is still beyond the scope of this hearing or not.

The CHAIRMAN. We did discuss that and that issue was presented last evening in detail by Senator Domenici, but the feeling was that because it dealt with the line of succession as to who would make the decisions in the event of a recusal, that that in effect brought it within the scope of the general charter that we have on this issue. That was the argument.

Senator DODD. If I'm not mistaken, and I want to check the record, but a similar question was raised last evening—and the Chairman can correct me if I'm wrong on this—but you made a determination that it was beyond the scope. I stand to be corrected if that's not the case, but I thought that was the decision last evening.

The CHAIRMAN. I don't have that recollection but, unfortunately, we don't have the transcript here at the present time.

Senator D'AMATO. I think clearly it would be incredulous if we were to take a position that this memo written by the White House as it relates to the line of succession and who will make the ultimate decision, which is really the scope of this memo, is beyond the pale of this Committee.

Senator DODD. Senator, I'm not arguing about lines of succession. There was a decision last evening when this matter was raised. I'm repeating what I thought the issue was last evening—

Senator KERRY. Was not the full document made part of the record?

The CHAIRMAN. I thought it was. My recollection is that it was, but I can't be certain of that because it would have happened late at night and it was——

Senator KERRY. I was the one who was inquiring about it and I think afterwards Senator D'Amato followed up and——

Senator D'AMATO. That's right, and I asked that it be placed in the record in its entirety.

Senator DODD. I understand the point of succession but this goes into the matter of the scope of the hearing based on the resolution we agreed. This is the Rose Law Firm issue. That's not what the resolution talks about. That's that whole memo and I think we're going to face these issues.

Senator D'AMATO. We're not going into the Rose Law Firm or—this is a memo, among other things that touches on Whitewater. It says FDIC and RTC, Rose Law Firm issues. We're not going into the issues. The question this Committee will be attempting to ascertain is why is it and how is it that White House Counsel is providing this kind of legal documentation.

Senator DODD. I'm asking a procedural question, Senator procedural question. I'm not challenging your right to ask questions. It seems to me this memo includes matter, the Rose Law Firm issue, which was beyond the scope of the resolution which defines our job. I'm merely asking the question as to whether a procedure, a parliamentary question is it within or beyond the scope.

The CHAIRMAN. Let me say to the Senator, this document arrived late in the document production period. And it was not part of it, but when we became aware of it, we discussed it with the White House, and they were willing to make it available to the Committee. Now, my own view would be—and my own questions have been, limited solely to the items that are within the scope of our inquiry. If somebody were to try to take it off into another area, then I think the scope issue would arise in terms of our getting into the discussion here, but that has not happened thus far. I would hope that would not happen.

Senator DODD. Thank you, Mr. Chairman.

The CHAIRMAN. Senator D'Amato.

Senator D'AMATO. Senator, I'm going to yield to Senator Bond because he's going to want to return after a vigorous debate on the Floor in which he's going to participate in; is that right?

Senator BOND. That is correct. I thank the Ranking Member and I thank the Chair. Mr. Chairman, this argument over the scope of the hearings and seeing all these attorneys before me makes me understand now why I left the practice of law, staying up late at night, spending Sundays reading depositions rather than other things. I spent this Sunday trying to go over the depositions, and I gather that you all were, too.

Mr. Eggleston, when I signed in at Dirksen, I noticed that you and Mr. Podesta had signed in to go to room 542. I was just curious, what were you up to over here?

Mr. EGGLESTON. Sir, I was here to read my deposition on Sunday. I had been invited to come down and read it, and that's what I did.

Senator BOND. They made your deposition available to you?

Mr. EGGLESTON. Yes, only my deposition by the Senate was made available to me, and that's the only one I've read.

Senator BOND. Mr. Podesta, I guess, read his?

Mr. EGGLESTON. Yes.

Senator BOND. Mr. Klein, we've heard witness after witness over the last several days talking about legitimate Government interest in the White House as having the heads-up on the details of confidential criminal referrals. There isn't a hotline for the average citizen to call the RTC to say, am I part of your investigation, but apparently the White House does get that kind of heads-up, and I think that's something that people may be a little bit concerned about, as to why the White House gets special treatment.

Now, I would agree that Secretary Bentsen today made a good point, and I think others have inferred that there are some situations when you want to protect the President from an embarrassing or compromising encounter. It was very regrettable a few years ago that then Vice President Bush wound up having his picture taken with Manuel Noriega just before he was indicted. I think that there are probably legitimate interests in keeping the President from associating with people who are going to have major criminal actions brought against them. Is that one of the legitimate reasons for giving the White House a heads-up?

Mr. KLEIN. I believe so, sir.

Senator BOND. Would you explain how that would work and what would happen if the President were greeting a foreign visitor, for example? If he were going to greet a foreign visitor and you found he was going to be Noriega-ized, what would be your responsibility?

Mr. KLEIN. I had one experience with this, sir, and I could tell you how we did it in this instance. We did get a so-called heads-up from the office of the Deputy Attorney General. I then notified the Chief of Staff that the President was going to be in a room with certain people and that the President should not be taken aside and be put in a position talking alone with this person. That's the way it was handled.

Senator BOND. Since we understand that Governor Jim Guy Tucker was referred to as a target in the RTC criminal referrals and the President was to meet with him within about a week after the heads-up from the RTC from Mrs. Hanson, was a similar kind of warning given to the President?

Mr. KLEIN. I wasn't there at the time, sir. I only know what's been testified in the various committees, but I have no personal knowledge about it. It is my understanding from the testimony, which I assume you heard, is that there wasn't any heads-up given, and I also understand that people didn't have that knowledge at the time, but I don't have the facts, sir.

Senator BOND. Mr. Sloan, you were present and I think you had conversations with Mr. Lindsey on or after the September 30th conversation and after the October 7th conversation. Did you provide any warning to the President not to be taken aside or meet with Governor Tucker?

Mr. SLOAN. I did not provide such warning, Senator, but it might help if I explained the sequence a little bit and make sure there

was no misunderstanding with respect to this matter, if you think that would be helpful.

Senator BOND. It has to be brief because that's about all I have.

Mr. SLOAN. There's a reference to Mr. Tucker in my notes from September 30th. I talked to Mr. Lindsey after the September 30th conversation and after the October 7th conversation. Last week for the first time, after Mr. Leach publicly released some documents, I had the opportunity to review Mr. Lindsey's notes of a conversation with me which includes references from the September 30th and October 7th conversation intermingled, including the reference to Jim Guy Tucker, which would indicate that that conversation with Mr. Lindsey had to have occurred on or after October 7th. So in terms of the information going to Mr. Lindsey, it would have been on or after October 7th, sir.

Senator BOND. Would you provide us with those notes?

Mr. SLOAN. You have them, sir.

Senator BOND. And what is the reference, Mr. Lindsey's notes?

Mr. SLOAN. I believe the Committee has them. They were part of the material that Mr. Leach released last week, and I assume this Committee has them as well.

Senator BOND. So you did not convey and no one conveyed to Mr. Lindsey or to the President the fact that the September 29th heads-up conveyed information that Governor Tucker was a possible target?

Mr. SLOAN. Let me be clear about this. I had no information until the last several weeks about what information was or was not provided to the President. I knew that I had discussed matters with Mr. Lindsey. As a result of reviewing Mr. Lindsey's notes, those notes seem to establish that the conversation about Jim Guy Tucker would have occurred on or after October 7th.

Senator BOND. Your testimony is that you talked to Mr. Lindsey both after the September 30th conversation and after the October 7th conversation.

Mr. SLOAN. That's correct. That's right. I have a recollection of talking to him after both conversations.

Senator BOND. One thing that very much concerns me, Mr. Klein, is what can happen if there is a heads-up given to somebody mentioned in a criminal referral. Bill Roelle of the RTC was adamant yesterday throughout his testimony here, that no one from outside the RTC should have the information, not the Secretary of the Treasury, not the White House. When he was here this week, he said that not even this Committee should know about it. But is there a difference in when you could disclose, just if the President were the target or if he were a witness or a subject? Would there be a difference as to when it would be appropriate or inappropriate to advise the President?

Mr. KLEIN. I don't think so, sir, and I think your concern is fair, but I think the question you need to ask is this is information which could be used for a legitimate, indeed important, purpose. You know about the issue with Jimmy Carter's brother, Billy Carter, the matter which he received a heads-up on and a Committee of the Senate issued a bipartisan report acknowledging the propriety of it.

The President, for example, could be in a situation dealing with foreign leaders when a press release or press leak would come out. It may or may not, but it could. The question you need to ask is, there is a legitimate function and there is a potentially illegitimate function, and the question is was it used properly or misused.

To that effect, I think your concerns are very important. The information ought to be very carefully guarded. It shouldn't be disseminated to people needlessly. It ought to go only through the White House Counsel but ultimately it seems to me the President of the United States under our constitutional system serves a different function from other citizens and it would not be realistic to ignore that fact, and I think time and again, you'll see there could be a legitimate need. The question has to be, I believe, was it used properly or was it abused? If it was abused, then I think that is a very serious matter.

Senator BOND. Can you assure us under oath it was not abused? I apologize to the Chair. Can you assure us?

Mr. KLEIN. I was not there. I have no information to the contrary, sir.

The CHAIRMAN. Senator Dodd.

Senator DODD. Thank you very much, Mr. Chairman.

I thank all of you for being with us today. Let me begin with you, Mr. Eggleston, and I think the Chairman may have already raised some of these questions, but let me come back to them if I may.

First of all, as I understand it, you attended the meeting on February 2, 1994 in Mr. McLarty's office.

Mr. EGGLESTON. That's correct.

Senator DODD. It was Mr. McLarty's office?

Mr. EGGLESTON. It was definitely in Mr. McLarty's office.

Senator DODD. Who was at that meeting?

Mr. EGGLESTON. On behalf of the Treasury Department, Mr. Altman and Ms. Hanson. From the White House I was present, Mr. Nussbaum, Ms. Williams and Mr. Ickes.

Senator DODD. Now, I would like to have you share with the Committee your recollections of that meeting, specifically as it pertains to the issue of whether or not Mr. Altman informed the group, that it would be possible for the RTC to be able to file whatever actions were necessary prior to the statute of limitations running out on the 28th of that month. I think you've responded to this already, but is there any doubt in your mind as you recall the conversations during that meeting, that Mr. Altman left any impression as to the ability of the RTC to bring those actions and to meet its responsibilities prior to the tolling of that statute?

Mr. EGGLESTON. Senator, my understanding from that meeting was that the RTC would meet its responsibilities by the time of the expiration of the statute of limitations.

Senator DODD. From whom did you glean that impression?

Mr. EGGLESTON. From Mr. Altman.

Senator DODD. Did Mr. Altman also share with you during that meeting who was going to be responsible within the RTC for making decisions regarding those civil suits within the RTC?

Mr. EGGLESTON. He did. He told us that Ms. Kulka and Mr. Ryan would make the decision and that he would accede to whatever decision they made and he would make no effort—he would

not review it. Whatever decision they made would be what the RTC did, and he was quite emphatic on that, as I recall.

Senator DODD. Now, as a lawyer, is it your understanding that at that juncture, Mr. Altman had de facto recused himself from the RTC matters?

Mr. EGGLESTON. De facto, yes, that he was not going to be applying his own judgment to the issue of whether—to the issue of the RTC's decision, but that decision would be made by the RTC career employees at a level below him. It may have gone up through him, but he was not going to exercise any discretion or review of the decision.

Senator DODD. If I can move quickly to you, Mr. Sloan, I'm very interested in the September 29th meeting. We've received testimony here from Ms. Hanson that she was sent to that meeting, at least it's her recollection, tasked to—we're developing a whole new vocabulary here, as these kinds of hearings have a tendency to do, but "tasked" is the operative verb, I guess—to this meeting by Mr. Altman for the specific purpose of informing Mr. Nussbaum of these referrals. You were at that meeting, as I understand it—

Mr. SLOAN. Yes, sir.

Senator DODD [continuing]. On the 29th. What was the primary purpose of that meeting?

Mr. SLOAN. Well, the meeting at the White House on September 29th was to discuss the release of the Waco report that the Treasury Department was going to release, I think, the next day.

Senator DODD. How long did that meeting take?

Mr. SLOAN. Oh, a rough estimate would be perhaps 30 minutes or something along those lines.

Senator DODD. And the entire meeting was consumed exclusively with the Waco discussion?

Mr. SLOAN. Right. There was a Waco meeting with other people present from Treasury besides Ms. Hanson.

Senator DODD. Were any other subjects raised at that meeting besides the general discussion on Waco?

Mr. SLOAN. No, sir, not to the best of my recollection.

Senator DODD. Were you present when Ms. Hanson spoke with Mr. Nussbaum at that meeting?

Mr. SLOAN. What happened was that as people were leaving from the meeting, Ms. Hanson pulled Mr. Nussbaum aside. He asked me to wait in his outer office and said he wanted to speak to me later. I waited there for a brief period of time and he then called me back into the office and he said something like I want you to hear this and he asked Ms. Hanson to—to essentially repeat what she had said, to my understanding.

Senator DODD. Why don't you tell what you heard her say.

Mr. SLOAN. She said there had been 8 or 9 referrals or a referral involving 8 or 9 matters. She said that there might be press inquiries about the matter. She said that the Clintons were named in it, and I remember that there was also some reference to the Clinton 1984 campaign, if I recall correctly.

Now, what stuck in my mind was that the Clintons were potential witnesses, and that the Clinton 1984 campaign was a potential subject. I don't recall whether she used those words, but that is just what stuck in my mind from the conversation. She also stated

that she believed that Roger Altman had sent Bernie some materials on this previously, and either then or shortly after that, Mr. Nussbaum indicated that he didn't recall that. And that was the sum of what Ms. Hanson said, to the best of my recollection.

Senator DODD. Did you ask Ms. Hanson any questions after she completed her statement to Mr. Nussbaum?

Mr. SLOAN. Not that I recall.

Senator DODD. At any point in that conversation, did Ms. Hanson indicate to you that she had been sent to this meeting, not only for the purposes of listening to the Waco discussion, but also sent by Mr. Altman to inform Mr. Nussbaum of this particular decision?

Mr. SLOAN. Nothing beyond the comment that I referred to earlier that she thought that Roger Altman had sent Bernie some materials on this previously, so she mentioned Roger Altman's name in that context, but solely in that context.

Senator DODD. To your knowledge, did you see any of those materials that were allegedly sent to Mr. Nussbaum?

Mr. SLOAN. No. As I say, Mr. Nussbaum said he didn't recall that and in a subsequent telephone conversation, Ms. Hanson said that she had been mistaken, and she called our attention to a March 1992 New York Times article, and there's some reference to that in my notes of September 30th. I don't remember her exact words about that New York Times article of March 1992, but she did clear up that point in a subsequent conversation.

Senator DODD. I can see that time is beginning to run out. Mr. Klein, I presume others will, but if not, I'm interested in talking to you and Ms. Nolan about the February 24th hearing before this Committee and your decisions, I gather the following day or was it March 3rd—I'm sorry, March 3rd when information you had regarding additional contacts that Mr. Altman failed to inform this Committee about, but I'll come back to that.

Mr. Chairman, as I've done with previous witnesses here, and I'm being repetitive, but I think it's extremely important that each and every witness respond to this question, for obvious reasons. So in the time remaining, let me ask all of you, and understanding again that you're under oath, as I know you're all aware, I'll ask each of you to respond to this question.

Did you take or instruct anyone to take any action to obstruct or impede the Resolution Trust Corporation's handling of either the criminal or civil cases against Madison Guaranty?

Mr. Klein.

Mr. KLEIN. No, sir.

Senator DODD. Mr. Eggleston.

Mr. EGGLESTON. No, sir.

Senator DODD. Mr. Sloan.

Mr. SLOAN. No, sir.

Senator DODD. Ms. Nolan.

Ms. NOLAN. No, sir.

Senator DODD. Second, are you aware of anyone in the RTC or the Treasury Department or within the White House taking any action to obstruct or impede the Resolution Trust Corporation's handling of either the criminal or civil cases against Madison Guaranty?

Mr. Klein.

Mr. KLEIN. No, sir.

Senator DODD. Mr. Eggleston.

Mr. EGGLESTON. No, sir.

Senator DODD. Mr. Sloan.

Mr. SLOAN. No, sir.

Senator DODD. Ms. Nolan.

Ms. NOLAN. No, sir.

Senator DODD. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator D'Amato.

Senator D'AMATO. Thank you very much, Mr. Chairman.

Mr. Chairman, I'd like to make an observation before I ask some questions. I am taken by this new description, "de facto recusal," particularly as it relates to Mr. Altman. This is a new creation. I don't recuse myself because I said that I would be bound by the final determination of Ms. Kulka. Therefore, I can stay on and not recuse myself because, after all, I've said that I will not be bound. And I have to say to you that in light of the testimony and the affidavits that we've received, the depositions, I find it hard to believe that Counsel to the President would be so exercised about Mr. Altman even considering, if we were to say just considering, recusing himself. I find it hard to believe that Mr. Eggleston would be, after that recusal, writing memos as to who it was that was going to be the decisionmaker as it related to what action the RTC may or may not have taken.

Simply put, it's one thing for someone to say that I will absent myself, when all of this comes out and blows up, from the final decisionmaking. And therefore I'm de facto recused, but not actually recuse oneself. The two are inconsistent. There would be no reason, we are talking about a recusal as it relates to one case for him not to exercise that judgment, none.

Except there were powerful voices in the Administration, Maggie Williams in her conversations, in Mr. Altman's diary, says Mrs. Clinton is "paralyzed." You're going to get no health care if we don't take care of this matter. It's obvious that people feel much more comfortable, Mr. Altman's protestations, notwithstanding, to say that de facto I'm removing myself. I say this because, you know, I cannot let it go unchallenged that somehow we don't have to worry about Roger Altman whether he does or when he does recuse himself because he has "de facto recused" himself. Well, Mr. Nussbaum thought it was important. Maggie Williams thought it was important, and as a matter of fact, they didn't buy this "de facto recusal."

Now any lawyer who is steeped in ethics can suggest that given what you know of the situation that it was improper for the kind of pressure that was placed on him by people at the White House to keep him from recusing himself, if that's what you're suggesting then I suggest that you better go back to Ethics 101.

Mr. EGGLESTON. Did you want a comment to that, Senator?

Senator D'AMATO. No. It's my observation. I heard about this "de facto recusal." I heard about it from Mr. Cutler, I heard about it from his minions. I say it's a lot of nonsense, Mr. Klein, in your deposition——



Senator BOXER. Mr. Chairman, may I make a parliamentary inquiry at this point or a point of information which would certainly not take away from the time. What the Senator has just said, in my opinion impugns the integrity of these people. I think that and I would hope that since he did not allow them to address that, that when his time is up we can give these witnesses a chance to respond. If I were them, I would be highly insulted, and frankly, I don't think it was an appropriate thing to say, but the Senator can express himself. He is certainly not going to listen to me about that.

The CHAIRMAN. Let's go ahead and restore Senator D'Amato's time and then at the end of the statement, if the Members want to have a comment to make, we'll—

Mr. EGGLESTON. Mr. Chairman, I most definitely do have a comment to make at the conclusion of Mr. D'Amato's statement.

Senator D'AMATO. Mr. Klein, in your deposition, you stated that you had discussions with Bernard Nussbaum, then-White House Counsel, concerning the possible recusal of Roger Altman from all RTC decisions involving the Madison case; is that correct?

Mr. KLEIN. That is correct, sir.

Senator D'AMATO. In one of those discussions with Mr. Nussbaum, did you come to learn that Mr. Altman had had a meeting at the White House with several White House officials at which Mr. Altman's recusal had been discussed?

Mr. KLEIN. Yes, I did, sir. As I said in my opening testimony, approximately a week after the February 2nd meeting I learned of that fact.

Senator D'AMATO. Do you know whether White House officials advised Mr. Altman with respect to his decision to recuse himself in all RTC dealings in connection with Madison?

Mr. KLEIN. I did not know, sir, no.

Senator D'AMATO. You have a view about whether it was improper for the White House staff to advise Mr. Altman with respect to his decision to recuse on a matter that would affect Madison or Whitewater.

Mr. KLEIN. In my opinion, the White House staff shouldn't advise Mr. Altman on that matter, sir.

Senator D'AMATO. Would it be imprudent?

Mr. KLEIN. I think it would be imprudent.

Senator D'AMATO. You have a view whether it would be proper for White House staff to put pressure on a Government official not to recuse himself?

Mr. KLEIN. In a matter relating to the White House like this, I do have a view on that, sir. I think it would be improper to put pressure on an official.

Senator D'AMATO. Did Mr. Nussbaum ever express a preference concerning whether Mr. Altman should recuse himself from RTC decisions involving Whitewater?

Mr. KLEIN. He did discuss a preference with me, sir, yes.

Senator D'AMATO. And what was that?

Mr. KLEIN. He preferred that Mr. Altman not recuse himself.

Senator D'AMATO. And did he tell you why?

Mr. KLEIN. He said that he preferred that because he thought that the politics were such, in other words, there were political con-

siderations at this time, Ms. Rickie Tigert was before a Committee, this was in early February, before a Committee and that Committee or several Members of the Minority were trying to extract a blanket recusal.

There were also press calls and—in that regard, and people calling for, as well, Mr. Altman's recusal. Mr. Nussbaum said he thought, as a matter of principle, that people shouldn't recuse unless they were required to. He also said, in particular, he said that he was concerned about Ms. Kulka.

Senator D'AMATO. What did he say about his concern as it related to Ms. Kulka?

Mr. KLEIN. He said that Ms. Kulka was someone he had known from a case he had done, the Kaye, Scholer case in private practice, and he said in words to this effect, I don't believe I can quote it, but that she was a difficult person to deal with, she was unreasonable, she could be unfair.

Senator D'AMATO. Is it clear to you, based on your conversations with Mr. Nussbaum, that he preferred to have Roger Altman as the decisionmaker?

Mr. KLEIN. Yes, sir.

Senator D'AMATO. Do you know why Mr. Nussbaum—well, you said that and I see our time is running out.

Let me ask you this. Did he indicate anything about dealing with Ms. Kulka, that you recall?

Mr. KLEIN. I believe he said he had had an experience with her in the Kaye, Scholer case, when he was in private practice.

Senator D'AMATO. And what was that experience?

Mr. KLEIN. He was a lawyer, as I understand, he was representing Kaye, Scholer when Ms. Kulka was involved, she represented the OTS in a proceeding against Kaye, Scholer. That was my understanding.

Senator D'AMATO. Did he say something like she was tough?

Mr. KLEIN. The words that come to my mind are "difficult" or "unreasonable," sir.

Senator D'AMATO. What about "aggressive"?

Mr. KLEIN. That is consistent with what he said, yes.

Senator D'AMATO. I want to thank you for your very candid testimony, Mr. Klein.

The CHAIRMAN. Let me also say before yielding to Senator Sasser that we've heard a lot of witnesses and I'm refreshed by the fact that the answers we've gotten so far are more straightforward and, I think, direct than some of the others we've gotten, and that I find that a refreshing tone and I appreciate that, and I just want to say that now to the witnesses that are here.

Mr. Eggleston, you'd asked to make a comment and I said we'd permit that.

Mr. EGGLESTON. Thank you, Mr. Chairman.

In light of the comments that Senator D'Amato made, I have been counting up the number of individuals and entities that have reached the conclusion that Mr. Altman did not have a legal obligation, ethical obligation to recuse himself. I think the suggestion that Mr. D'Amato made was that I needed to go back, I think I and all of us needed to go back to Ethics 101 if we couldn't see that he absolutely had an obligation to do so.

My understanding, as I sit here today, is that prior—that Mr. Altman had discussed this with a variety of people at the Treasury Department prior to the time that he had the February 2nd meeting and that the advice he got was either that he did not have a legal obligation to recuse himself or that people gave him political advice. Senator Bentsen said it's up to you. I think Ms. Kulka, to the extent I remember, did not tell him that he had a legal or ethical obligation to do so. My recollection is that there had been some discussion with Mr. Foreman, the Treasury Department Ethics Officer, beforehand on the legal or ethical obligation. He was told he did not have such.

He was told—Mr. Altman was told at the February 2nd meeting that if he had a legal or ethical obligation to recuse himself, he should do so. At the end of that meeting, it is my recollection that he was going to seek legal ethics opinions from the Ethics Officer at the RTC and from the Treasury Department. Based on the testimony I've heard here today, he did so and those two officials determined that he did not have a legal or ethical obligation to recuse himself.

This matter has also been reviewed by Mr. Cutler who came in, was brought in in order to review this. Mr. Cutler determined that he, Mr. Altman, did not have a legal or ethical obligation to recuse himself. This matter was also reviewed by the Office of Government Ethics, an independent agency under the supervision of Mr. Potts. Mr. Potts, as we have heard, was appointed during the Bush Administration, he is at least a Republican appointee, if not a Republican. Mr. Potts, at the conclusion of extensive factual investigation by the Treasury Department, I think, concluded two things: That Mr. Altman did not have a legal or ethical obligation to recuse himself. Mr. Potts, in addition, concluded that it was perfectly appropriate—that it was not legally or ethically inappropriate—for Mr. Altman to discuss his recusal issue with anyone he wanted.

I don't have enough fingers to have quite counted up the number of entities, apart from myself, who are legal and ethics experts who have come to the conclusion that Mr. Altman did not have a legal or ethical obligation to recuse himself. The discussion and the issues that were under discussion at the time, February 2, were not legal/ethical discussions. If he had a legal or ethical obligation to recuse himself, he would do so. It was political. It was how was it going to look. It was where was he going to take more heat. Was he going to take more heat if he stayed there or was the Administration going to take more heat through the sort of impact of domino effect after Rickie Tigert. Was Jamie Gorelick going to be asked to recuse herself.

Mr. Ludwig, on the 25th, even though there is no matter in front of him, decides to recuse himself. Is some midlevel person at the EPA going to be asked to recuse herself, even though there is nothing remotely in front of her. The issue was political and press and congressional; it was not legal/ethical, and I think the fact that every entity that has looked at it came to that same conclusion is worth an enormous amount to me, sir.

The CHAIRMAN. I think it was important that you have a chance to put your statement on the record. You've done that.

Senator D'Amato has asked for 30 seconds to respond. I think in light of the time that was taken to do that, that it's not an unreasonable request, so——

Senator D'AMATO. Mr. Chairman, I'm just trying to make the point that we've invented a——

Senator KERRY. It's not an unreasonable request, Mr. Chairman but on the other hand, it absolutely breaks up the process here and totally sets a different standard for how we're proceeding. I'm just saying to my friend that, you know, we're going to get into that same old problem at the end of the line here.

Senator D'AMATO. I just wanted to make an observation, if I might.

The CHAIRMAN. I think when—I'm told by the clerk over here that when the objection was raised by Senator Boxer that it had the effect of taking 40 seconds off his time so let's restore that and——

Senator KERRY. He already did restore the time.

The CHAIRMAN. Well, I'm told we did not—well, now I'm told that we did. So I'm getting conflicting messages myself.

I recognize Senator D'Amato for 30 seconds.

Senator D'AMATO. Mr. Chairman, I just wanted to make the point that we've heard a lot about this new definition, and I'd like to know what is the legal definition of "de facto recusal"? What does it mean? That's my point and that's what I raised because I kept hearing it over and over, and I thank my colleagues.

The CHAIRMAN. We'll get into that.

Senator Sasser.

Senator SASSER. Well, thank you, Mr. Chairman.

Mr. Eggleston, you learn in law school one thing is elementary as in is there a de facto position and a de jure position, and would you explain for the Committee the difference between the two or perhaps I ought to do it. De facto is when something is actually the fact of the matter and de jure is something which might appear to be legal or perhaps you'd have a better definition, but let's hear the definition of that.

Mr. EGGLESTON. I can tell you the way I'm using the two words and I don't—I assume they're consistent with the way others are. There were two things he could have done. He could have publicly announced that he was taking himself off the case or he could have done what he did, which is just announce to his staff and to the White House—he did to both, Ms. Kulka testified before you that he told her the same thing—he could announce that he was not going to be a decisionmaker on this matter. I've called that de facto.

Senator Sasser, if you have a better word for that, I don't—I didn't mean to coin a phrase by using that expression, but what I meant was he was not going to participate in the decision. That's something he told us and that's now something I understood that he told his own staff, his own RTC staff.

Senator SASSER. So he was essentially out of the decisionmaking line on the question of whether or not to proceed with the civil actions against Madison Guaranty S&L.

Mr. EGGLESTON. That was my understanding as of the February 2nd meeting.

Senator SASSER. Of course, that all became irrelevant on down the line because the statute of limitations was extended and it made no difference whether or not he chose to proceed with the action against Madison or not.

Mr. EGGLESTON. That's correct, both Houses of Congress passed the extension. I think the President signed it on February 12th extending the statute through December 31, 1995.

Senator SASSER. Now, Mr. Eggleston, let me ask you this: Did you attend the October 14, 1993 meeting that was attended by Ms. Hanson, the General Counsel of the Treasury Department, and Mr. Steiner and Mr. DeVore?

Mr. EGGLESTON. I did, sir.

Senator SASSER. Did you also attend the meeting on February 2, 1994 with Mr. Altman and Ms. Hanson?

Mr. EGGLESTON. I did.

Senator SASSER. Did you also attend the February 24 hearing before this Committee here?

Mr. EGGLESTON. I did.

Senator SASSER. Now, Mr. Altman was asked a series of questions at that hearing and that's become a great bone of contention here. Did there come a time in that hearing when you were surprised by Mr. Altman's testimony and felt that he could have answered more forthrightly?

Mr. EGGLESTON. During the—immediately during the questioning of Senator Gramm, he—I think Mr. Altman testified about the one substantive contact that he had had. He described it as procedural relating to the statute of limitations issue. I was surprised that he had not mentioned the fact that the second subject had been recusal. I had, as I think the Committee heard from Ms. Hanson, I'd actually called Ms. Hanson the day before or within a couple of days before. She testified, it was the day before, to make sure that Mr. Altman was prepared to answer a question about the February 2nd meeting. In light of that, I was surprised that he had not testified about the recusal aspect.

Senator SASSER. Well, did you speak to any of the Treasury staff about Mr. Altman's testimony while you were at the hearing, Ms. Hanson or others?

Mr. EGGLESTON. I did not. Immediately after the testimony before Mr. Gramm, I went out in the hallway. I had a cellular phone and I called back to the White House to say that I was concerned. I did not speak to any members of the Treasury staff.

Senator SASSER. So you were concerned about Mr. Altman's response to the question?

Mr. EGGLESTON. I was, and I called back to the White House.

Senator SASSER. In fact, who did you call, Mr. Eggleston?

Mr. EGGLESTON. I called someone in Mr. Podesta's office. I don't—as I sit here today, remember whether I'd—I called to speak to Mr. Podesta. I may have gotten Mr. Podesta, I may have gotten his deputy.

Senator SASSER. As a matter of fact, you were so concerned that you called the White House Counsel, Mr. Bernie Nussbaum, who's on vacation in Mexico; is that correct?

Mr. EGGLESTON. I did. Mr. Nussbaum had left Thursday morning, the morning of the hearing, for—it was actually a Federal Bar

Council event. He had been the president the year before and I called him, I think on more than one occasion on that weekend to tell him that I was concerned about the testimony.

Senator SASSER. Do you have any explanation as to why Mr. Altman did not refer to the recusal here before the Committee, the subject of the recusal?

Mr. EGGLESTON. Sir, I do not. When I called Ms. Hanson the day before, she told me the three subjects that he was going to testify to, or two or three subjects that he was going to testify to about regarding the February 2nd meeting. I specifically asked whether he was prepared to answer questions about that meeting, and she said that he would testify that related to procedures—I said 3 and now I can only remember 2—but about procedures relating to the statute of limitations, and I recall that she specifically mentioned the recusal issue, that he would testify [about that].

Senator SASSER. Did you ever have any conversation with Ms. Hanson thereafter about Mr. Altman's testimony and why he did not address the issue of recusal when he was before the Committee on February the 24th.

Mr. EGGLESTON. I did not. By that time, I'd raised it within the White House. There is substantial, I think there's been testimony about it, there were substantial conversations in the White House about this issue, and the White House was deciding sort of what to do and how to respond. I did talk to Ms. Hanson again. I did not talk to her about Mr. Altman's testimony. I want to make sure I'm clear on that.

Senator SASSER. You subsequently had conversations with Ms. Hanson, but not about the subject of Mr. Altman's testimony—

Mr. EGGLESTON. Correct.

Senator SASSER [continuing]. Before the Senate Banking Committee?

Mr. EGGLESTON. Not about that particular issue. I called her to ask her whether it was true that Jay Stephens had been hired to pursue the civil matter. I called the next day. During the hearing Mr. Altman had testified that Pillsbury, Madison & Sutro was the law firm [that had been hired]. I heard during the course of the day on Thursday that Jay Stephens had been hired. I called her the next morning or that day to say I've heard this. I assume since the law firm is public information, the name of the lawyer is public information, is it Jay Stephens? She told me either she didn't know or she didn't know who Jay Stephens was and that was the end of that conversation.

Senator SASSER. She did not know who Jay Stephens was?

Mr. EGGLESTON. She told me either that she didn't know or that she didn't know who Jay Stephens was. I actually think she told me she didn't know who Jay Stephens was, but I can't—it could have been the former.

Senator SASSER. The fact that Jay Stephens was hired was a matter of some chagrin to some members of the White House, was it not?

Mr. EGGLESTON. I had spoken about it with some people.

Senator SASSER. I'm not unsympathetic with their concern about him being hired myself.

Mr. Klein, one quick question, you are turning to Mr. Altman's testimony before the Committee on February 24th, were you surprised by his testimony?

Mr. KLEIN. I was concerned in two respects, Senator. One, as I said, I had heard that the issue of recusal had been raised. That's all I heard was that he had brought it up and there was nothing in the newspaper accounts referring to recusal in the lengthy descriptions of his testimony.

Senator SASSER. Well, my time has expired, but you heard it had not been brought up by, not by Mr. Altman at the Committee—

Mr. KLEIN. No, I heard it had been brought up at the meeting, but not discussed at the hearing by Mr. Altman, and so I was concerned about the omission, essentially the same point that Mr. Eggleston just made.

Senator SASSER. Thank you very much.

The CHAIRMAN. Thank you, Senator Sasser.

Senator Gramm.

Senator BRYAN. Excuse me, Mr. Chairman. Earlier the point I think he had indicated that he had concerns about two points and I don't think that he fully responded to the question.

The CHAIRMAN. He should respond.

Mr. KLEIN. The second point I had, later in the day there were press accounts on Friday the 25th about the hearing. Late in the day about 4:00, Cliff Sloan, Associate Counsel, came to my office and asked me if he could talk to me and he said, look, I've read in the paper that Mr. Altman only testified that there was one meeting. He said I was involved in and know about some meetings in late September, early October. Sloan said, I don't know what Mr. Altman's knowledge was. I didn't deal with Mr. Altman, but I know about these meetings and I think it's important that the White House make sure it responds accurately to any questions and not say that there was only one meeting or anything like that. So I had a concern about additional meetings and I had a concern about the fact that as far as I could tell, recusal had not been mentioned, even though I had learned that recusal had in fact been discussed at the February 2nd meeting.

The CHAIRMAN. Thank you. Thank you, Senator Bryan.

Senator Gramm.

Senator GRAMM. Mr. Klein, your basic involvement here is that you're the one who was asked to look at the Altman testimony to try to decide what he had said that might not have comported with the facts. Moreover, to the extent that the White House was going to get involved in trying to clean up the mess, your job was to get that material together, analyze it and, working with others, try to see what should be done about it; is that right?

Mr. KLEIN. It's not exactly right. I was one of the people involved in it. I think it was Mr. Podesta's job. He was the person who was the point person on that issue, sir, but I was involved, yes.

Senator GRAMM. Now, we know that from The Washington Post this morning that the Altman testimony, in their words, "triggered a flurry of hurried sessions at the White House," triggered the calling of Mr. Nussbaum on his vacation in Mexico.

In looking at the testimony, in reviewing the transcript, in analyzing it, were you concerned or were others in the White House

concerned that Mr. Altman might, if his testimony were not fully corrected in a timely fashion, be subject to prosecution for lying to Congress?

Mr. KLEIN. No, I don't think anyone was at that level of concern, sir. I think there was concern that there were other meetings that were not discussed in his testimony. There was concern that several people at the White House had heard him talk about the issue of recusal and the question that we faced was—we had a dual purpose, sir. One was we felt that since we were party to these discussions, we had an obligation to make sure we got it right.

Second of all, we felt we had to notify Mr. Altman so that if he had forgotten these things or perhaps he didn't know about some of the things, that he would take appropriate steps. That's what motivated us.

Senator GRAMM. You were obviously involved in the analysis. Were you involved in the communication to Mr. Altman?

Mr. KLEIN. I was not, sir.

Senator GRAMM. Who made that contact with Mr. Altman?

Mr. KLEIN. John Podesta.

Senator GRAMM. Now, Mr. Eggleston, let me go back to a point you made earlier. I got the idea earlier that you were suggesting that there was such a thing as a concept of "secret recusal." Why would you want to recuse yourself and keep it from the public? It seems to me that in recusal, you are trying to not only take yourself out of a conflict of interest, but you're trying to eliminate the public perception and concern about it. Why would a concept like that have any value whatsoever to anybody?

Mr. EGGLESTON. I don't think that Mr. Altman was thinking about it as a "secret recusal." I think that the issue that he was thinking about, as I mentioned before, was sort of a two-step process. The first inquiry is, as I said, is there a legal or ethical obligation to recuse? There are fairly, as I understand it, although Ms. Nolan, at the other end of the table, is the expert on this, that there are standards and precedents and the like that govern those kinds of determinations.

Senator GRAMM. What would be the value of a "secret recusal"?

Mr. EGGLESTON. I'll tell you what, to my mind, Mr. Nussbaum's concern was, but I'm not accepting the notion of "secret recusal." What I—what my view was was that as a practical matter, he was not going to be entering into the decisionmaking process.

Senator GRAMM. On February the 2nd, you were at that meeting; right?

Mr. EGGLESTON. I was, sir.

Senator GRAMM. We know that two subject matters were discussed at that briefing: The statute of limitations and recusal. Could you give us a ballpark estimate, what percentage of the meeting was about statute of limitations and what percentage about recusal?

Mr. EGGLESTON. I'm not—this much I remember. I was sitting right across from Mr. Altman actually in the room and he was reading to us from talking points on the statute of limitations issue. I do not think he was reading to us from talking points on the recusal issue, but on the statute of limitations issue, I, frankly,



had the feeling he didn't know what he was talking about particularly.

It was very detailed and legally complex and he was simply reading to us on that and assuming that the talking points I've now seen are the ones that he used and read from it, that the statute of limitations portion of that was about as long as it would take to read those talking points, and then there were one or two questions, I really only remember one, following that about the statute of limitations issue, I don't know, 10 minutes or so. And I think——

Senator GRAMM. Did he then bring up recusal or was recusal brought up first?

Mr. EGGLESTON. No. My recollection is that the first issue that he brought up was the issue of the statute of limitations. That concluded then, as I recall it, Ms. Williams asking whether the private attorneys——

Senator GRAMM. Let me ask you a couple more questions, because I have only a limited amount of time.

Mr. EGGLESTON. Yes, sir.

Senator GRAMM. Can you tell me what Maggie Williams's role is in all of this, that's something that I find very difficult to understand. Why would the Chief of Staff of the First Lady be such a prominent player in this whole process. In fact, as we understand from her deposition, she actually set up the meeting the next day, after Mr. Altman called her and said that he wanted to tell people at the White House that he had decided not to recuse himself.

Could you very succinctly, as a person who was in both meetings and heavily involved in all of this, could you define very succinctly her role?

Mr. EGGLESTON. Senator Gramm, I really don't think that I, in my position, can distinctly or succinctly define her role. It was not my view that she was a leader, a lead player in this at all. My understanding, at the time, was that the meeting on February 2nd, at least, had been set up through Mr. McLarty's office.

Senator GRAMM. OK. Let me go back and try one other approach. We know from depositions that, on February 1st, Mr. Altman was pretty matter-of-fact that he was going to recuse himself. He came to this meeting on February 2nd, and somewhere at this meeting there was a confrontation, like St. Paul on the road to Damascus, and he changed his mind. Now he, of course, cannot recall that anybody ever said to him don't recuse himself. It just happened. You were there, and you're under oath. I'd like you to recount to me if you can recall any negative word that anybody said at that meeting about recusal.

Mr. EGGLESTON. Senator, I will do my best to tell you what I think happened.

Senator GRAMM. Tell me, and don't tell me about telling me because I got a limited amount of time.

Mr. EGGLESTON. I'm sorry, I will just jump into it. When the statute of limitations portion of this was over, my recollection is that he said that he was thinking about or considering recusal. It is definitely true that he did not, that the response——

Senator GRAMM. What did other people say to him about recusal?

Mr. EGGLESTON. Let me just say, this was more of an atmospheric to me than what people said to him. If he expected everybody to say terrific and pat him on the back, that didn't happen.

Senator GRAMM. What did they say?

Mr. EGGLESTON. He got a series of questions. The questions were, why are you thinking about doing it, who's going to decide, who are they, where did they come from, what do you know about them, those, what he was met with was not, in my view—

Senator GRAMM. Did anybody say, in any other words, Mr. Altman, don't do this.

Mr. EGGLESTON. Not that I recall, sir. I think what he got was a series of questions that, put together, expressed skepticism about this decision. I thought people—I thought, I remember, I actually thought at the time that there was—I mean, this was a strained and restrained meeting. I think no one said that to him.

Senator GRAMM. You are saying here under oath that you cannot recall a single person who said, don't do it, we oppose you doing it. You are leaving us exposed. Nobody said any of that?

Mr. EGGLESTON. I don't think anybody said that. I think that the questions that he got which—

Senator GRAMM. So nobody said, let me again—

The CHAIRMAN. Why don't you finish your point, the question that he got—

Mr. EGGLESTON. I just don't want to—I'm afraid if I just answer that question, I'm going to leave a misleading impression.

The CHAIRMAN. That's what we don't want you to do.

Mr. EGGLESTON. I'm afraid if I give you what everybody said, you're not going to understand my view of this meeting. I think he probably anticipated everybody would say to him, fine and the meeting would end. That's not the reception he got. He got a series of questions, then, about what the consequences from that would be, that I think, put together, expressed a view that the White House wasn't too happy about this, but he never ever, when I say—but I've given you the kind of questions. I do not think—I do not remember that anyone at that meeting told him what the White House preference was or told him what to do. Sir, that's my recollection—that is my best recollection of this and that's the best I can do, but I don't want to leave the impression that somehow—

Senator GRAMM. Mr. Chairman, may I follow up with one word?

The CHAIRMAN. Senator Gramm is asking a follow-up on one word and I don't think that's unreasonable. What was the word?

Senator GRAMM. You said "the consequences." What did you mean by "consequences"?

Mr. EGGLESTON. Who would decide. There was no discussion of—I want to make that as clear as I can. There was no discussion of how this case would ultimately come out.

Senator GRAMM. Who would decide what?

Mr. EGGLESTON. Who would decide to bring an action.

Senator GRAMM. So the whole discussion was, if you were gone, who was going to make the decision about whether to bring an action—about whether to bring an action on the Madison/Whitewater case?

The CHAIRMAN. I know you said it wasn't the whole discussion. You said that was part of the discussion.

Mr. EGGLESTON. Yes, I was about to react to that.

Senator GRAMM. The whole discussion was, if you step out of the picture, who is going to make this decision about proceeding on Madison? That's what the discussion was about; right?

Mr. EGGLESTON. That was part of the discussion, it was not the whole discussion.

Senator GRAMM. But that is what it was about, right, that part of the discussion?

The CHAIRMAN. The answer to that we're going to come back if there are further questions.

Mr. EGGLESTON. That was one of the questions asked. That was not the only question asked.

Senator GRAMM. But that part of the discussion, that question——

Senator BOXER. Chairman.

The CHAIRMAN. Senator Gramm, I don't want to be arbitrary, but we are over and I've accommodated a couple of additional questions and I think what we ought to do is save the rest for the next round and you'll have a next round. You're not going to be cut off arbitrarily.

Senator Shelby.

Senator SHELBY. Thank you, Mr. Chairman.

I wanted to go into two or three things and of course I don't have 7 minutes or maybe it's less than that. I want to go to the first meeting Mrs. Hanson had at the White House.

Mr. EGGLESTON. Sir, if you are directing that to me, I had nothing to do with that.

Senator SHELBY. Mr. Sloan. Mr. Sloan was there and what date was that?

Mr. SLOAN. Well, I've been able to reconstruct it. I believe it was September 29, 1993.

Senator SHELBY. And was that meeting in Mr. McLarty's office?

Mr. SLOAN. No, sir. That was in Mr. Nussbaum's office and the fact, just to clarify, the meeting was about the Waco situation. It was a brief conversation after the Waco meeting.

Senator SHELBY. A brief conversation?

Mr. SLOAN. Yes, sir.

Senator SHELBY. Is this when she first briefed Mr. Nussbaum about criminal referrals?

Mr. SLOAN. To the best of my knowledge, yes, sir.

Senator SHELBY. Now, who was in that meeting? You?

Mr. SLOAN. Yes.

Senator SHELBY. Mr. Nussbaum?

Mr. SLOAN. Yes. Nobody else. Nobody else.

Senator SHELBY. What did she tell you in that meeting?

Mr. SLOAN. Just to reconstruct, she had pulled Mr. Nussbaum aside and I was in Mr. Nussbaum's outer office. They talked separately for a very brief period of time, and he then asked me to come in and asked her to repeat what she had said or words to that effect, and what she said was that there had been 8 or 9 referrals or a referral with 8 or 9 matters.

Senator SHELBY. Eight or 9 criminal referrals?

Mr. SLOAN. I can't remember whether she used the word "criminal" or not, sir. She said that there might be press inquiries. She said that the Clintons were mentioned.

Senator SHELBY. OK.

Mr. SLOAN. And she made some reference to the Clinton 1984 campaign and what stuck in my mind was that the Clintons were potential witnesses and that the Clinton 1984 campaign was a potential subject. I'm not sure if she used those words.

Senator SHELBY. Did she tell you that Roger Altman told her, instructed her to brief Mr. Nussbaum and perhaps you, if you were there?

Mr. SLOAN. She did not say that. She made a reference to Mr. Altman. She said that she thought that Roger Altman had previously sent some materials on this to Bernie Nussbaum but that was the only reference to Mr. Altman in that meeting.

Senator SHELBY. But she did make that reference to him, didn't she?

Mr. SLOAN. Yes, sir.

Senator SHELBY. Let's go to Mr. Steiner's diary and let's—just an excerpt of it, Mr. Eggleston and Mr. Sloan, if you—I'm referring to what he said in his diary that we've talked about up here about recusal, Senator Gramm and others. It says "Roger Altman originally decided to recuse himself, but under intense pressure from the White House," intense pressure, "he said he would make the final determination based on the recommendation from Ellen Kulka, the General Counsel."

Now, what did—transpired at the White House, you know, later it was said that by Mr. Steiner here, used the word it was "unacceptable," unacceptable for him to recuse himself.

Was this phrase used or was it just skepticism as you mentioned, that someone, you, or Mr. Nussbaum or whoever was there with you did they say you're not going to do this or what did they say. You used the word "skepticism."

Mr. EGGLESTON. Sir, could I have—I've never seen this diary. Would it be OK if I saw the sheet?

Senator SHELBY. Of course. We're going to have counsel—

The CHAIRMAN. Let's just hold the time for a minute there until he has a chance to review.

Senator SHELBY. Thank you, Mr. Chairman, I appreciate that time is precious.

Mr. EGGLESTON. If you could direct me, this is to—

Senator SHELBY. OK. About—let's see.

Mr. EGGLESTON. I'm sorry, Senator Shelby, I found it, thank you.

Senator SHELBY. You've got it now?

Mr. EGGLESTON. Yes.

Senator SHELBY. These were Mr. Steiner's accounts, contemporaneously made more or less about what was going on.

Mr. EGGLESTON. Well—

Senator SHELBY. And you see his words there. Said, in the second paragraph there, I believe third paragraph, says the White House staff told Roger Altman that it was unacceptable, in other words, unacceptable that he recuse himself.

You used the word, there was "skepticism" about the recusal.

Mr. EGGLESTON. Sir, I was only—this is the meeting that I—the February 2nd meeting is the only meeting that I attended on this issue. If this is a reference to the February 2nd meeting and only the February 2nd meeting, it is not my recollection that anyone said in that meeting that his recusal was unacceptable.

Senator SHELBY. Mr. Sloan, were you at that other meeting?

Mr. SLOAN. No, sir.

Senator SHELBY. You were not at any of these, OK.

Mr. EGGLESTON. The reason I asked to see this is that I thought you had read something about he would make the decision after a recommendation from Ms. Kulka. I thought you had read that.

Senator SHELBY. I read that in there.

Mr. EGGLESTON. I couldn't quite find that. That is—

Senator SHELBY. This is in the first paragraph—I mean paragraph 2 enumerated here.

Mr. EGGLESTON. I just wanted to say that is absolutely contrary to what he told us at the meeting. That is absolutely the opposite.

Senator SHELBY. And what did he tell you?

Mr. EGGLESTON. He told us that he would not be making the decision, that Ms. Kulka would be the decisionmaker, Ms. Kulka and Mr. Ryan, if that's a suggestion, and again I just read it quickly, if that is a suggestion that he was going to make an independent decision after getting the recommendation, that is not accurate. That was not said to me.

Senator SHELBY. I want to go down one more time into the diary and what we call here, if you look at paragraphs 3 and 4, and this is about the middle of the page where it says "once again they," speaking of the White House staff, "they were very concerned about him," Roger Altman, "turning the RTC people they didn't know, RC" so Roger Altman did not formally commit himself to stepping down. As an attorney, we all know how attorneys—that phrase is used. It's a tough phrase.

Mr. EGGLESTON. If this again, sir, assuming this is a reference to the February 2nd meeting and not some other conversation that I don't know anything about and didn't participate in.

Senator SHELBY. You weren't at that meeting, then?

Mr. EGGLESTON. I was at this meeting. I just want to say that you can't quite tell from this.

Senator SHELBY. Did you use the phrase "turning"?

Mr. EGGLESTON. No, sir.

Senator SHELBY. Was Mr. Nussbaum there? Did he use that phrase?

Mr. EGGLESTON. He was there. He did not use that phrase.

Senator SHELBY. Did anyone use that phrase or was that just an interpretation of what went on?

Mr. EGGLESTON. To the best of my recollection, no one used that phrase. This issue, though, is discussed and I mentioned that in response to other questions. Who are they, who are the people, that issue was subsequently discussed.

Senator SHELBY. Mr. Sloan, were you at that meeting?

Mr. SLOAN. No, sir.

Senator SHELBY. I want to go back to Mr. Altman's testimony briefly. I've got a minute here before this Committee.

Who at the White House helped prepare Mr. Altman for this RTC oversight hearing before the Senate Banking Committee?

Mr. EGGLESTON. Sir, other than my call to Ms. Hanson the day before, I don't think that anybody from—I know that, as far as I know, no one from the White House went as part of this group to prepare them. I made this call before. I've now read in the IG report that maybe Mr. Podesta had made a call before. Mr. Altman was not being prepared by the White House. He was not—he was an RTC witness.

Senator SHELBY. But you were deeply concerned, you were and others at the White House after you heard—you were here at the Banking Committee hearing—when you heard what he said to the Banking Committee, you immediately went out and got on the telephone looking for Mr. Nussbaum and some others to say basically that testimony is not accurate, is not forthcoming.

Mr. EGGLESTON. I immediately—

Senator SHELBY. Isn't that what you were saying?

Mr. EGGLESTON. I immediately went out and called Mr. Podesta. Actually, I knew that Mr. Nussbaum was on his way to Mexico.

Senator SHELBY. You knew that the record had to be corrected and damage control had to be done, didn't you?

Mr. EGGLESTON. I knew that the White House had to make a decision about what to do as of that time. I'm not buying into—"wasn't forthcoming." I knew that there was an issue that the White House had to address.

Senator SHELBY. Why did it take so long to correct the record? One, two, three letters and still a lot of it was never corrected?

Mr. EGGLESTON. Sir, I've heard a lot of people say that it was a week later before Mr. Podesta made his call. Actually this happened on Thursday and since February is a short month Mr. Podesta made his call the next Tuesday. We waited until Monday because Mr. Nussbaum was out of the office and did not get back until Sunday. We thought it was important that Mr. Nussbaum participate in this decision. We had a couple of meetings on it on Sunday—or excuse me, on Monday, and then on Tuesday, Mr. Podesta called and then essentially made the call and I see you're out of time.

Senator SHELBY. I need that 10 minutes I was asking for.

The CHAIRMAN. Well, if it's important, we'll come back to it.

Senator Mack.

Senator MACK. Thank you, Mr. Chairman, and I will follow up frankly on where you were going with those questions, Senator.

Mr. Chairman, last night I said that Mr. Altman continued to make statements intended to evade and not to inform, and I anticipate that the discussions today will highlight that point. The reality is that it's not just me making the charge of evasiveness and lack of candor. It is backed up by the White House staff as well. They saw Mr. Altman's testimony on February 24th and said, in essence, he hasn't been completely honest with the Committee, he should have told the Committee about two things: First, two fall meetings and the fact they were about criminal referrals mentioning the Clintons; and second, that the February 2nd meeting included a discussion on recusal.

To me, this is additional evidence to add to the record on Mr. Altman's evasiveness which I referred to in previous hearings. As you know, Mr. Altman was given the opportunity to correct the record and he was assisted by, among others, the members of the White House Counsel's office sitting here before us. Looking at his March 2nd letter, we see that he refused their advice and continued to mislead the Committee on these two significant points—again the issue of criminal referrals, and the recusal. On this point, I just want Mr. Klein and Mr. Eggleston to confirm some things for us.

Mr. Eggleston, isn't it true that after Mr. Altman testified on the 24th of February, you were concerned that he had not been accurate in his responses to Senator Gramm's questions on the topics discussed during the February 2nd meeting?

Mr. EGGLESTON. It is true that I was concerned that he had not testified about the recusal portion of the meeting.

Senator MACK. And Mr. Klein, weren't you particularly concerned about his response to Senator Bond's question asking more generally for information on any contacts between the White House and the Treasury, basically the conversations in the criminal referrals?

Mr. KLEIN. I was concerned about that based on the information that Mr. Sloan had told me about on Friday afternoon, sir.

Senator MACK. In fact, Mr. Klein, didn't Mr. Sloan ask you not to send out any sort of "sweeping confirmation" of Mr. Altman's testimony because you knew it was inaccurate.

Mr. KLEIN. What Mr. Sloan said is that the White House should not confirm in any way that there had only been one such meeting. OK. Now Mr. Sloan was careful with me, and I want to be careful with this Committee, because I think it matters about people's reputations. Mr. Sloan did not tell me what Mr. Altman's knowledge was, and I have no knowledge of what Mr. Altman's knowledge was. What Mr. Sloan told me was that the statement that there was only one meeting was incorrect, based on his knowledge, and that's what I want to make sure, that the White House not inadvertently confirm that statement because we had more knowledge.

Senator MACK. On February 28th and March 1, 1994, you all participated in several meetings on these matters. One of which I understand was with Mr. Nussbaum and lasted 2½ hours. I also understand that you all decided that Mr. Podesta should call Mr. Altman to get him to correct the record. And we know, Mr. Podesta did so on the evening of March 1, 1994.

I assume you have looked at Mr. Altman's March 2nd letter to us and I ask you, does this letter even mention the words "recusal" or "criminal referrals"? Does it provide any detail whatsoever on these two topics, details you know he was reminded of just the night before he sent the letter?

Mr. EGGLESTON. Sir, I have not seen those. Those were not sent by the White House before they were sent to this Committee. I'm happy to look at them, but I did not see them at the time.

Senator MACK. They're pretty short. If somebody would take them the letter. This is the March 2nd letters.

Mr. Klein, maybe you are familiar with that letter and, frankly, I'm a little bit surprised that you all haven't seen this letter. This has been at the center of this controversy for some time.

Mr. KLEIN. I have seen this letter, sir, and the letter doesn't mention recusal and that surprised me, yes, sir. The letter mentions these other two conversations about which I really knew very, very little because, as I say, I was not there at the time, but the letter, certainly in its omission of recusal, did surprise me, yes, sir.

Senator MACK. Does it do more than surprise you?

Mr. KLEIN. It concerned me.

Senator MACK. And why does it concern you?

Mr. KLEIN. It concerned me because, as I understood, that issue had come up at the February 2nd meeting, and I think that was why Mr. Podesta had called Mr. Altman because I think the record was unclear about that.

Senator MACK. But let me just—again, what is the concern about? I mean, here we are now—he's given his testimony on February 24th. There's been a flurry of activity, in fact, some people have referred to it as a frenzy of activity at the White House, a call from Mr. Podesta and we'll keep it narrow here, the issue of recusal is passed on to him. And as a matter of fact, the interesting thing is from the testimony we get the impression that he said to Mr. Podesta "I really don't want to hear about those other meetings." So the conversation turned to the issue of recusal. And yet it doesn't show up in the letter. What does that say to you?

Mr. KLEIN. Well, let me say this. I was not privy to the conversation between Mr. Podesta and Mr. Altman. What my state of mind was—

Senator MACK. I mean, let's be—you're not saying that Mr. Podesta did not mention recusal, did you?

Mr. KLEIN. Mr. Podesta told me he mentioned recusal. He did say that. My state of mind was the testimony was inaccurate. It didn't say that one of the issues that was discussed was recusal. I was concerned and frankly puzzled why he didn't say that in this letter.

Senator MACK. So the letter, then, is as puzzling as the testimony on the 24th?

Mr. KLEIN. Yes, sir.

Senator MACK. What does it say to you about this letter that we have received which supposedly was for the purpose of clearing up his testimony? To me it sounds evasive. Can you accept that term?

Mr. KLEIN. I don't want to—you see, I heard Mr. Altman testify last night. He says that in response to Mr. Podesta, this is what he said before this Committee, that in his mind his testimony was accurate. Now, I can't put myself into Mr. Altman's mind.

Senator MACK. Let me ask you, who was at the—you were at the meeting where, in fact, he did speak of recusal.

Mr. EGGLESTON. Yes, sir, I was at the February 2nd meeting.

Senator MACK. What's your reaction to the fact that this letter does not include recusal? After you have—or go ahead.

Mr. EGGLESTON. Well, I think the record sort of shows that I was concerned about the February 2nd meeting even before his testimony. I was sufficiently concerned that he would be called upon to testify to that meeting and the aspects of it that I called Ms. Han-



son. The hearing took place, during the hearing I went out to notify the White House that I thought there was a potential problem. And then I was one of the people who sort of prompted what The Washington Post this morning called the flurry of activity that lasted a couple of days before the White House made its decision. Senator, I don't mean to duck you, but I don't have any more knowledge than you do. And you probably have more knowledge than I have about this—about the issue of why he responded the way he did in this letter. I don't have any greater information than you have.

Senator MACK. I mean, I'm a little—I guess I am a little bit surprised that the two of you would sit there—I mean, especially you, Mr. Eggleston. You were at the meeting where recusal was discussed.

Senator GRAMM. Two meetings February 3rd—

Senator MACK. Excuse me, you were at a meeting where the recusal issue was discussed. You were at a number of meetings at the White House where there was deep concern that Mr. Altman had been “misleading,” to use Dee Dee Myers's words. You call him to try to impress upon him the importance of being open, frank with this Committee. He sends a letter down here and the best you can do is say you're surprised?

Mr. EGGLESTON. Well, sir, again, I heard him and I heard Ms. Hanson. If this letter was intended to fully correct the record—obviously it did not. And if it was intended to fully correct the record, it should have mentioned recusal.

Senator MACK. Is that troubling to you?

Mr. EGGLESTON. If it was intended to fully correct the record, it is, of course, troubling to me.

Senator MACK. What do you think it meant?

Mr. EGGLESTON. I've heard him and Ms. Hanson testify it wasn't intended to fully correct the record, but if it was intended to do so obviously it didn't and that is quite troubling and it's obviously quite troubling to this Committee.

Senator MACK. Mr. Chairman, this is the last comment. And again I think it's clear over and over and over again at the attempt of Mr. Altman to be evasive when it comes to providing information to this Committee. And that's probably being too polite.

The CHAIRMAN. Senator Kerry.

Senator KERRY. Mr. Chairman, thank you very much.

Let me say at the outset that it's refreshing as a couple of my colleagues have said to have witnesses who are as straightforward and I think articulate as you have been thus far. And Ms. Nolan, you can just bask in their glory and feel comfortable in your isolation.

Ms. NOLAN. Thank you, Senator.

Senator KERRY. For now, anyway. I don't know what's to come. I want to pursue a series of questions, but I want to bring us to where I think we are, if I can be bold enough to do that, at least for myself.

You know, in all the days of testimony and in all of the depositions, everything up until this moment in time, not only do we not have a showing of any White House effort to specifically directly change the investigation, to the contrary, we have evidence that when Mr. Altman was viewed by the White House as having testi-

fied incorrectly, the White House took steps in order to immediately initiate a change in that.

I notice that in today's Washington Post a story saying the front page of the White House did nothing to correct the word record for a week after the testimony. I don't think the evidence shows that. That's incorrect; isn't it? It did not take a week to begin the process of correcting it, did it?

Mr. EGGLESTON. The process began that day which was a Thursday and we called Mr. Altman—Mr. Podesta called Mr. Altman—on Tuesday.

Senator KERRY. I don't have time to go into all the details of that. I think it ought to be on the record and as we go down the road here I hope it will be. But the evidence also shows that not only the White House do that, but the White House did touch base with ethics individuals and each of those ethics entities at one stage or another of communications found no legal or ethical requirement with respect to recusal. In addition to that, unlike Iran-Contra I might add or other scandals we've had, the White House was the effort here to try to make sure that information was getting out and an ethical obligation has been unfairly labeled in The Post as damage control when people were required to engage in this action of furthering the record.

Now, in addition to that, there is no showing that the Treasury Department did anything to interfere with the RTC and there is no showing by the RTC itself that they were directly pressured or otherwise changed. So where are we? Where we are, I think, is looking at the question of the veracity of testimony before this Committee and there are legitimate issues with respect to credibility of certain witnesses because we have people under oath at odds with each other and we're going to try to sort that out.

Second issue comes down to this question that we are spending a lot of time trying to understand, and that is political judgment. You have alluded to it and I agree. That is something central in this question of recusal. And I go back to what I said a couple of days ago. It is also central to the question which I think is the whole thing here. I mean, I really think this is what we're tugging at. It is not whether or not something did happen, but it is whether or not something may have been in the works and might have happened but for other events and what people were thinking. Now that remains political judgment. It may be clumsy damage control or not. I still am not convinced that that rises to any other level of ethical or legal according to all the standards we've read, but I want to explore it.

In your testimony in the deposition, Mr. Klein, there's a really disturbing passage that we've got to try to explain here. I think my colleagues are focused on it also. It is clear from the testimony from your testimony and other people's testimony that Mr. Nussbaum seemed to prefer to have Mr. Altman making decisions at the RTC in the Madison case rather than Kulka.

If you go to the deposition on page 30 it says did the conversations you had—this is the deposition of you Mr. Klein. Did the conversations you had with Mr. Nussbaum in which Mr. Nussbaum told you of his opinion of Ellen Kulka come up in the context of Mr. Nussbaum telling you that he preferred, he would prefer it if Mr.

Altman did not recuse himself? And your answer is the question "did Mr. Nussbaum say you prefer he not recuse," that Mr. Altman not recuse—and you went on a little more and then you said "I think two facts are in my mind clear. He did not think Altman should capitulate to pressure and he was concerned about the fact that if Altman did not, if Altman did recuse that Ellen Kulka would then be in charge."

"Question: So it was clear to you based on your conversations with Mr. Nussbaum that Mr. Nussbaum preferred to have Roger Altman making the decisions at the RTC in the Madison case as opposed to Ellen Kulka?" Your answer, "that's correct."

Now then you turn to another deposition and this is the deposition of you, Mr. Eggleston, page 136. And the question was "did Mr. Ickes tell Ms. Hanson that it would be better if that information did not get out?" This is the information about Ms. Hanson saying that there should be a recusal but the conversation incidentally in Ms. Williams's office to the effect that he was not going to recuse himself. And your answer in this, Mr. Eggleston, was "I don't remember him saying that, but I think that was the import of his question. I don't actually remember him saying that but I think that's what he meant by the question."

"Question: In other words you interpreted what Mr. Ickes said to mean that he thought it would be better if nobody knew that Ms. Hanson had recommended recusal?" You answered that the concern was a leak and so forth and you went back and forth.

Now, when you add these up and then add them still further to another area in your deposition, Mr. Eggleston, on page 74 you said that the concern in the White House was whether or not Altman should recuse himself, a consideration and whenever that started to get raised on the Hill it got raised in the White House.

There seems to be a sense left with us and I want you to have plenty of time to answer it that that there was political judgment being exercised here. Maybe the best thing to do is kind of explain it if it was clumsy, if it was not the best judgment then we can really understand this better, but I sense that that's what's happening here.

Now, the biggest dilemma is this, and I've asked you two questions on that biggest dilemma. If indeed there was, to use this new term, a de facto recusal and I've seen it throughout the record here, Mr. Altman himself saying in talking points prepared by Ms. Hanson, Mr. Altman saying it to us and Ms. Hanson saying it to us, "I'm not going to make a decision. I'm not involved."

Now, if he wasn't going to make a decision and was not involved, there's a real dilemma in understanding why Mr. Nussbaum would feel more comfortable with him there than Ellen Kulka and how it is that he could be then viewed in the White House as being the one to make the decisions instead of Ellen Kulka while at the same time truly not being involved. And this may be the nub of this whole thing, that there was somehow a presence there, a perception of a chilling effect or something that might go away. Obviously it would go away on March 30th because on March 30th he was moot anyway. Can you explain all of that?

Mr. EGGLESTON. Well, let me try. You've raised a number of different issues. Let me see if I can touch on each of them.

My sense of this when I say that it was a—let me start this way. I did not think, I'm only one person who talked to Mr. Nussbaum, but I did not think that Mr. Nussbaum intended to affect the outcome of whatever it was that the RTC was going to decide. I never had that feeling. He had a personal problem with Ellen Kulka. She's been described as tough. It is fair to say that he thought that she was unreasonably tough.

I don't know how much this Committee knows about the Kaye, Scholer matter, but from Mr. Nussbaum's perspective and from the perspective of most of the Bar that practiced against the OTS and the RTC, the decisions involving that law firm were all but extortion, that the OTS had all but shut down the law firm. In order to extort \$40 million out of the law firm. That was the perception, and that this Committee will probably remember, I can't remember whether there were hearings after that or not. But there were certainly sort of seminars all around the country. He thought she was unreasonably tough. He had—my sense of this is that he had a personal problem with Ellen Kulka. I did not particularly think—and you can ask him and ask others—I did not particularly think that anybody else in the White House shared that. She was his opponent in a very bitter litigation. Very bitter litigation. And I think that he had a bitter reaction to her arising out of litigation. It was personal, but I think it was personal to Bernie Nussbaum. I do not think—I didn't hear anybody else in the White House say anything about Ellen Kulka or particularly care about Ellen Kulka. This, to me—and again, you'll talk to others, I can just give you my perception, this was a Bernie Nussbaum issue arising out of a litigation that he had had.

I did not think that he had intended to affect the outcome. He had a real problem with her because he thought her judgment was bad in that particular matter. I do not think and I did not think that he thought somehow that by having—I did not think that he thought that the outcome would be different if Mr. Altman remained in his position. And I think that's true for a number of different reasons. One is that Mr. Altman said it.

The second is that it's pretty clear to anybody in Washington and I think it was clear to me, at least at the time, if Mr. Altman had done anything whatsoever, anything whatsoever to interfere with the decision that Mr. Ryan and Ms. Kulka made, I think Ms. Kulka told you she wouldn't be at the RTC anymore. And I think we can imagine that she would do more than slip quietly into the night. I thought as a practical matter this "de facto recusal"—this was real, this was real even if Mr. Altman didn't want to do it. But I did not think that Mr. Nussbaum thought that there was going to be alteration in the outcome as a result of it. That was—that's just my perception at the time. You're going to ask others.

The CHAIRMAN. Well, you know this is pregnant for follow-up, but we're so far over the time I'm reluctant to do that. If we do—

Senator KERRY. Mr. Chairman, I'll even give up some of my next time or something. Could I just have the privilege of making a 30-second comment?

The CHAIRMAN. Let me inquire on this side.

Senator BENNETT. Mr. Chairman, I intend to follow this up as well, but I would be delighted to have.

Senator KERRY. Just a follow-up.

Senator D'AMATO. By the way, if I might make an observation, Mr. Chairman. It is moments like these that I think are important and I understand why the Chair ruled that we should give 10 minutes to our colleagues, the latitude to pursue a line of questioning. And I'm happy to yield to the gentleman.

Senator KERRY. I don't want to play by any special rules.

Senator D'AMATO. I don't think it's a special rule. I think it's comity and I'm delighted.

Senator KERRY. Let me say in fairness, and I say to my colleagues, I think the answer is a very important answer and a legitimate answer, but I'm even surprised that there isn't more statement. I think my colleagues have to be fair to understand that the White House was operating with the perception of an RTC that had already leaked and they had a perception of conceivable abuse here. In addition, there was a process of a demand for recusals going on that had no basis on legality or ethical standards. And so I think we have to really understand the dynamics and the full flavor of what was happening. And I simply want to say I think that when you do you begin to understand this a little bit better in fairness to what happened.

The CHAIRMAN. Yes, Mr. Eggleston, you wanted to add a point and I'll let you do that.

Mr. EGGLESTON. The only point I want to add, I've gone long enough, I didn't pick up the last of the points that Mr. Kerry mentioned, I wanted to make sure it wasn't because it was—I'd overlooked it. The issue that Mr. Nussbaum was actually talking about at the time was the perception of recusals—it was the perception of Rickie Tigert having to recuse. It was the perception for not, legal or ethical reasons. She had told, I think this Committee, that she would consult her ethics officer. And my recollection from the press really was that at least to some people that was not acceptable. And Mr. Nussbaum was concerned about a perception, sort of a domino effect, of how it would look if people who did not have a legal or ethical obligation to recuse themselves were nevertheless either being forced to recuse or maybe sua sponte start recusing themselves even though they had no action to take. That was the matter, that was the perception that Mr. Nussbaum was talking about at the time as it relates to this issue.

Mr. KLEIN. Senator Riegle, if I can add to that because I had numerous discussions—it is my view as well and I think this is something that Senator Sarbanes raised before that when this started with Rickie Tigert and sort of the price of admission to her confirmation was that she had to agree to a blanket recusal, even no specific matter before her, because she was a "friend of the First Family's," when I know the extent of Rickie Tigert's familiarity with the First Family.

This seemed to me the worst sort of politics, to be perfectly candid about it, that somehow this was going to be used against the President so that his nominees could not sit on any matter that was in any way relevant to him and so the cost of all these matters would be an extraction of recusal. So when Mr. Eggleston says that there were important political considerations, there were important

political considerations and I at least was very concerned about the politics of the matter. And I think that——

The CHAIRMAN. In that sense.

Mr. KLEIN. And so was Mr. Nussbaum in that sense.

The CHAIRMAN. I think that's illuminating and I think it's important that you have the chance to say that. Senator Bennett.

Senator BENNETT. Thank you, Mr. Chairman.

I do want to follow this direction because I think this issue is the nub of the matter. I will stipulate that you have correctly told us what Mr. Nussbaum was thinking and what his motives are. If that is indeed the case I would also say respectfully that Mr. Nussbaum is wrong. Mr. Nussbaum is seeing shadows that aren't there and that Mr. Nussbaum has missed the point.

Let me respond to Mr. Eggleston's rather vigorous, if not passionate, statement that came over and over again. "He did not have a legal or ethical obligation to recuse himself" and he quoted all of the entities that came to that conclusion and said "this carries great weight with me." And that obviously it carried great weight with Mr. Nussbaum.

Today we heard from Lloyd Bentsen who said he would have recused himself. And Lloyd Bentsen has been around this town to understand the political ramifications, to understand the appearances, to understand all of these circumstances, if it had been his decision he would have recused himself.

Ms. Hanson, who was the General Counsel of the Treasury Department handling this, recommended that he recuse himself. Ms. Kulka, who was the General Counsel of the RTC handling this, recommended that he recuse himself. And my memory is that last night he said in hindsight he wishes he had done so and had not responded to pressure, suggestions, whatever in the White House.

So I think Mr. Nussbaum carried his point in the meeting and I think subsequent events demonstrate that his point was wrong. However persuasive he may have been by virtue of his intelligence and articulateness or by virtue of his position as the leading White House figure at the meeting I think in hindsight it is very clear that Lloyd Bentsen's political instincts were the correct ones and Mr. Altman would have been far better served to have done it because this is the dilemma that he got himself into.

And we go back now to Ms. Hanson's deposition. She talks about this how he announced he was going to recuse himself, how Mr. Nussbaum in her words got excited. And indeed Mr. Altman confirmed that last night in his testimony that Mr. Nussbaum was very excited. And then Ms. Hanson in her deposition, "the following morning Mr. Altman called me. He said he had spoken with Mr. McLarty the prior evening and Mr. McLarty had wanted to know what had taken place at the meeting. Mr. McLarty didn't attend the meeting. He also said that he had had a couple of other calls and that he had decided that he would not recuse himself for the time being. He said that he didn't believe that it made any difference to the outcome but that it made them happy," and "them" clearly is identified elsewhere as the White House.

He was trying to have it both ways. He was trying to be in a position where he could say to Ms. Kulka, to the people in the RTC, to whatever ethics officers that would talk to him, look, I'm going

to have nothing to do with this, I've made my decision to turn the whole thing over to Kulka and he could say to the White House, that was clearly in a position of preferring him as the decisionmaker, hey, I have not recused myself, I'm still in the position, you don't need to worry.

Now the whole matter became moot because events overtook it. But let us not pay so much attention to the fact that events overtook it that it did happen in this fashion at a time when no one was sure that events were going to overtake it. No one was sure that the Congress was going to extend the statute of limitations. No one was sure that Mr. Altman was in fact not going to be called upon to make a decision. So he had himself set up with the thing looking both ways. And that to me is the problem with the "de facto recusal." It got him into a political pickle, it got him into this kind of controversy, it got him before this Committee for however many hours it was. It created a disaster in his career and I think it is a very illustrative lesson that we will all learn. And when there comes a time when your gut tells you, regardless of what the specifics and technicalities of the law might be, when your gut tells you I better get out of this, you are far better off to follow your gut and stick with it and do not change it and do not say, well, I'll try to be de facto this way and de jure another way. You take your position and you stand with it and that's why Mr. Altman is in so much trouble and that's why this Committee is so exercised about it.

Senator D'AMATO. I'd just like to make this point and I thank my friend for yielding. If you put it in writing that is the recusal and you can't take it back, and then you're not even in a position to hear anything or to discuss anything. But if you operated under the guise of a de facto, well, then notwithstanding I'm not going to make a final judgment is there and if there's a problem he can insert himself. And that's my observation and I think it kind of dovetails with Senator Bennett and I thank the Senator for yielding.

Mr. KLEIN. Senator Bennett, can I respond to your comment, please?

Senator BENNETT. Surely.

Mr. KLEIN. I think there are two points you make and I think you want to be clear and we all want to be clear about it. One is a point that I think Mr. Cutler has already spoken to. I think it is well recognized at the White House that it would have been far preferable if the meeting had not occurred on February 2nd, for some of the reasons in terms that you have laid out here. Mr. Eggleston was there. I was not. I would rely on his account to that meeting. Nevertheless that seems to me to be something Mr. Cutler has already said.

The second point you said, with respect, sir, I do not entirely agree with. I think the White House shouldn't be involved, but the issue of when a person recuses, you may be right that people recuse because in their gut they think they can't do the job. But people may recuse because of political pressure, because it is the easy thing to do. And I, at least, think that is inappropriate. I have practiced before many judges that I have known socially, gone to law school with and I consider friends, and I have never had a moment's doubt that they could decide fairly. And I find it interesting,

frankly, that Republicans all of a sudden see recusal as a universal panacea when for years they have been the party that opposed the Independent Counsel Law precisely on the ground that the Attorney General of the United States should be held accountable to make the tough calls. And I think we let people avoid the hard decisions. Now I do believe, and I don't want to leave any doubt that that decision belonged to Mr. Altman, should have been made by him and him alone, but I think it is a bad message to send to people that you cannot be fair and impartial and call them as you see them because you know somebody or you are friends with somebody. I strongly disagree with that suggestion, sir.

Senator BENNETT. I accept that. I think you're right as a general rule and I think that's proper. I don't think that was the circumstance here. As I say, I think Mr. Altman clearly should have and virtually everyone who has looked at it in hindsight has come to the same conclusion including, from his testimony last night, Mr. Altman. May I just ask one purely informational quick question? How many of you are there, how big is the President—is the Office of the Counsel to the President? How many Associate Counsels, et cetera, are there?

Mr. KLEIN. There is a Counsel to the President which is now in effect, I hate to say *de facto*, but it is Mr. Cutler. Deputy Counsel to the President, 7 Associate Counsels on the staff and 3 Assistant Counsels. So that's 12 full-time lawyers. We have in addition some detailees who are assisting us in the hearing, sir.

Senator BENNETT. I can remember when there was only one.

The CHAIRMAN. Senator Bryan.

Senator BRYAN. Thank you very much, Mr. Chairman.

I want to associate myself with an observation of Senator Kerry made just a moment ago. I have been enormously impressed and very pleased with the candor of the witnesses today in responding to questions. I have to say, it has been in the course of 4 days of hearings but those of you who have had the chance to respond to this panel and one may not agree with your responses, but they have been direct and to the point. And frankly, I've had a sense of frustration in talking to some of our witnesses previously. The thing that I find most troublesome is the testimony of Mr. Altman on February 24th.

I think by any standard, given its most charitable interpretation, it was incomplete and misleading and notwithstanding an opportunity to correct that testimony, it took a series of some four letters subsequent to his testimony.

I think that you have served the President well by sensing immediately, as you did, Mr. Eggleston, from your testimony, literally leaving the hearing, as I understood it, and saying wait a minute, we may have a problem here. That, I don't believe is complete.

Mr. Klein, you've indicated that although you weren't privy to the meetings that you from what you had been told, also shared a concern. So I think that both your instincts and your judgment were quite correct and I applaud and compliment you for that. Help me to understand, notwithstanding the good advice—and essentially from your presentation here today both of you are extremely articulate and persuasive men in advocating your cause—how did it come to be, as you understand it, that this testimony



was not clarified on the March 2nd or at least the letter that followed that. I believe that would have been on the March 11th, I believe—March 3rd, excuse me. March 3rd.

I'm greatly troubled by that and somewhat perplexed because you were on top of it. You recognized it. Mr. Eggleston, you called the day before to say, look, is Mr. Altman prepared to answer that. Please share with me what you know from your own knowledge and what you have learned since.

Mr. EGGLESTON. Sir, from my own knowledge, I really know about the activities in the White House starting on the 24th and then through the call that Mr. Podesta made on March 1st. I will tell you that there was a lot of discussion about that call, how to make it.

We recognized that the fact that the White House was calling Mr. Altman about his testimony was, in and of itself, a newsworthy event, that that was an event of consequence for the White House to call a Deputy Secretary of the Treasury and suggest that there were aspects of his testimony that he might want to supplement. And in some sense that's a reason it took us a while. We wanted to be careful about how we did it. We wanted to be deliberate about how we did it, but I think we did it fairly quickly, actually, under the circumstances. That call was made, but I just can't help you much [beyond that].

Mr. Altman did not—as far as I know, and maybe he did through others, but as far as I know, he did not consult back with us. I don't think he then sent us the March 2nd letter for our review and say to us, you're the ones who called us. This is what we're going to send back. Is this now OK? I don't recall that he ever communicated back to us to ask whether we thought that he had covered all the issues that we had concern about.

And frankly, sir—I know at some level, it's not much of an excuse—but on the afternoon of March 4th, the grand jury subpoenas showed up from Mr. Fiske and it really—and actually even the day before, I think, Mr. McLarty—I think that is right. Mr. McLarty, the day or so before, had issued an edict that there will be no more communication with the Treasury Department, that we had gotten in far enough, and we were going to drop a curtain and we just weren't going to do this anymore.

And so, first, I think with Mr. McLarty on the 3rd and with the arrival of the Grand Jury subpoenas on the 4th, the White House was then really completely out of it. So I really can't—and the series of letters sort of after the first one—even the first one, I just can't tell you how they came to be.

Senator BRYAN. Am I correct that, in effect, as you alerted the White House to this problem that you saw, the ball then gets lateraled to Mr. Podesta; is that correct?

Mr. EGGLESTON. Yes, Mr. Podesta is an Assistant to the President. I'm an Associate Counsel to the President. Mr. Podesta was essentially the person who was the point person and he was the one who was leading the discussion and the person who made the phone call.

Senator BRYAN. Mr. Klein, you actually called Ms. Nolan, as I understand, to inquire, essentially of what the ethical obligation

was in terms of correcting the record. That's my understanding. If I'm mischaracterizing it, please correct me.

Mr. KLEIN. I don't think that is correct. I would have been well advised to call her about that but I don't think I did.

Senator BRYAN. You did not call Ms. Nolan. Was there any conversation at all with Ms. Nolan? I thought somebody had called—

Mr. KLEIN. I did have a conversation with Ms. Nolan, that is one of the questions that I—when we were talking about sort of the White House response and how many meetings or nonmeetings or conversations. I had recalled a staff meeting that Ms. Nolan referred to in her testimony or that she had made a call to the Treasury, and I called her to ask her about that.

Senator BRYAN. "About that." Let me just be a bit more precise, Mr. Klein, because I've obviously misunderstood some part of it. Did this not deal with the testimony of Mr. Altman on the 24th?

Mr. KLEIN. It came in response to the testimony because the question was, Senator, how many White House contacts there were with Treasury. And as I recall, Ms. Nolan had brought up at a morning staff meeting this question that she discussed in her testimony about a contact with Dennis Foreman, and so I had called Ms. Nolan to ask her about that because one of the questions, I believe, was how many contacts had occurred. That's the context, sir.

Ms. NOLAN. Senator—

Senator BRYAN. Could I—and I want to give you a chance, but let me just indicate the highlight of the deposition indicates that on February 28th, you, Mr. Klein, "called Ms. Nolan and raised concerns and wanted to discuss with me"—that's you speaking now—"whether the White House had an obligation to correct Mr. Altman's testimony that he gave on the 24th."

Let me, with that, lead in. And if I've mischaracterized your testimony, I apologize, but that seems, at least as Ms. Nolan understood it—let me defer to you to respond to that, Ms. Nolan.

Ms. NOLAN. Yes, that was my testimony, and Mr. Klein may have forgotten this because he was in several conversations, as I understand his testimony, about the matter and I was only in one, so I might remember it more explicitly. But he did call me, and I went over to his office; it was, as I understood it, early in the discussions of whether there would be some obligation to correct the testimony.

Senator BRYAN. Is it fair to say that the question, as you understood it, was the context of ethical obligation because you served that function, or were they just asking you as another lawyer what your view was?

Ms. NOLAN. As I understood it, he was looking for my judgment on the matter, but I don't know that we were precise about that.

Senator BRYAN. But your responsibility within the White House deals with questions of ethics; am I correct, Ms. Nolan?

Ms. NOLAN. That's correct, Senator.

Senator BRYAN. Is it reasonable to conclude the question, then, may have been asked of you because of your position, although unstated because of your working relationship, what—do you think you were in effect giving them an ethical evaluation? Would that be fair? Am I reading too much into that?

Ms. NOLAN. I just don't know what was—

Senator BRYAN. What did you advise them—I know my time is—what did you advise Mr. Klein?

Ms. NOLAN. We started a preliminary discussion about whether there was any obligation to correct. I should explain, Senator, just so this is in context, that about a week earlier, I had broken my right shoulder in three places. So I was not a fully functioning member of the team right then. So I came over to Mr. Klein's office. We talked about the issue, and he indicated at the end of our discussion that he was going to pursue the matter. He thought—whether there was an obligation to correct or not, that there would be some kind of amplification that would probably be appropriate. That was—

Senator BRYAN. My time is up. It's tempting to ask a follow-up, but I'll yield.

Senator D'AMATO. Why doesn't the gentleman proceed.

Senator BRYAN. Ms. Nolan, as a follow-up to that, so the conversation just kind of ended at that point. You exchanged some thoughts with him. Did you indicate to him in any way—"him" being Mr. Klein—that you felt that there was an obligation to correct the record, either based upon some legal standard or ethical standard? Share with us a little bit more completely what you communicated to Mr. Klein.

Ms. NOLAN. Well, Senator, let me make clear that I spoke with Mr. Klein, and then we went into Mr. Nussbaum's office and spoke briefly about it, and then I spoke with Mr. Klein again immediately after the meeting. At that point, I saw only one page, I think, or a portion of the transcript. I had not seen the whole record, and so we were talking really quite generally at this point about what the issues might be.

Senator BRYAN. But did you give him any counsel in terms of what he should do? I understand it was a general conversation. What conclusion, if any, did you reach? What did you tell him, if anything, or maybe you just simply said, look, I'll have to think about this.

Ms. NOLAN. I don't remember coming to a conclusion at that point, because I remember that Mr. Klein indicated that whatever obligation there might be, it seemed to him that it would be a good judgment to clarify—if you didn't have to correct, to at least clarify—the record. That was the direction it was going to go in so you didn't have to reach a legal judgment about what might have to be done under those circumstances. So it wasn't concluded at that point. That's where we were.

Senator BRYAN. I thank the Chair and apologize to my colleagues for violating the time constraints.

The CHAIRMAN. Well, no. Senator D'Amato ceded to that graciously.

Senator ROTH.

Senator ROTH. Ms. Nolan, I'd like to draw on your expertise on ethics in a series of questions. Are you familiar with the February 22, 1993 memorandum from White House Counsel Bernard Nussbaum on prohibition of White House staff contacts with independent regulatory agencies?

Ms. NOLAN. I am familiar with it. I'm not—I don't know it word for word.

Senator ROTH. Did you have any role in drafting this legislation or this memorandum?

Ms. NOLAN. I don't believe so, Senator Roth. I came to the White House about 3 weeks before it was issued. My guess is that it was discussed in the staff meeting. It might have been reviewed, but I didn't have any role, other than that.

Senator ROTH. But it is the statement of policy as to prohibited contacts with agencies? Is that the purpose of it?

Ms. NOLAN. Yes, that is correct.

Senator ROTH. Now, I'd like to take you through this memorandum and have you, if you could, explain the significance of several key passages. Section A-1 concerns contacts with regulatory, investigative and procurement agencies and it states, and I quote:

There is generally no justification for any White House involvement in particular adjudicative or rulemaking proceedings at any agency.

Therefore, as a general rule, no member of the staff should contact any agency in regard to any adjudicative matter pending before that agency.

Do the Madison Guaranty criminal referrals constitute an adjudicative matter pending before an agency, either RTC or Justice Department, in your judgment?

Ms. NOLAN. Senator, I should explain that I have not reviewed these particular matters, and so I don't feel I'm in a position to give an off-the-top-of-my-head judgment. I believe that Mr. Cutler testified in the House that it was his view that these contacts should have gone through the Counsel's Office consistent with the memo.

Senator ROTH. Well, I have to say that I am somewhat surprised at your answer. Presumably, this was issued on February 22, 1993 to govern the kind of contacts that could be made by White House staff. And yet you're telling me that as one of the experts on ethics, you're not that familiar with this particular memorandum.

Ms. NOLAN. Senator, I'm sorry. I didn't mean to suggest that. What I meant to say was that I haven't looked at what the particular matter was, the Madison Guaranty matter, to state whether it would fall within the category of defined matters subject to the—

Senator ROTH. Let me ask you this, if I may. Would not a criminal referral constitute an adjudicative matter in your judgment?

Ms. NOLAN. Yes, it would.

Senator ROTH. And since we are talking about the Madison Guaranty criminal referrals, they would constitute, if I follow your answer, an adjudicative matter pending before an agency, either RTC or Justice Department; is that correct?

Ms. NOLAN. I'm sorry, Senator. Could you repeat that?

Senator ROTH. Well, you answered me that criminal referrals were an adjudicative matter, so what I am asking is aren't the Madison Guaranty criminal referrals an adjudicative matter?

Ms. NOLAN. I believe—I can only say, Senator, that I believe it would be, but I am not familiar enough with the matter to give you a specific answer.

Senator ROTH. But you would answer in the affirmative, as far as a criminal referral being an adjudicative matter?

Ms. NOLAN. Yes, sir.

Senator ROTH. Now, section A-1 of the memorandum includes two lists of Government agencies. The first group of independent agencies, and I quote, "should not be contacted by White House

staff" unless prior clearance is received from the White House Counsel's Office. The second group of agencies should not be contacted without prior clearance by the White House Counsel on matters regarding the exercise of their "regulatory or adjudicative functions." Is that correct?

Ms. NOLAN. Should not be contacted without the permission of the Counsel's Office?

Senator ROTH. Yes.

Ms. NOLAN. Correct.

Senator ROTH. Let me ask you this, Ms. Nolan. While the RTC is not included on either list, the memorandum goes on to state, and I am quoting "the list is merely illustrative. Many bureaus and divisions of agencies have authority to issue binding regulations or to decide specific claims and the same rules on prior clearance apply for those entities as well." And moreover, subsection A-2 states that the ban on agency contacts extends to "components of departments and agencies with authority to investigate charges of misconduct."

Now, Ms. Nolan, would specific investigative matters pending before the RTC, such as Madison Guaranty, be included in the ban on direct contact by White House personnel under the Nussbaum memorandum?

Ms. NOLAN. Senator, I'm not sure. If I were asked that question, I would have to look at exactly what the Resolution Trust Corporation's charter is and whether it is an independent investigative agency or not.

Senator ROTH. Let me go back and ask does RTC, in your judgment, exercise an adjudicative function?

Ms. NOLAN. Senator, I'm sorry. You're asking me to answer a question I haven't looked at. I have stayed out of the review of these matters, the contacts, the Treasury-White House contacts. I have stayed out of the review of that matter, and I have not looked at this particular question.

Senator ROTH. Mr. Chairman, my concern is that purportedly, the purpose of this memorandum was to determine when contacts with agencies by White House staff were to be banned. I did have a series of questions that I wanted to ask as to whether the contacts made by a number of White House personnel were within this ban, but if I understand what you are saying, you are not that well acquainted with the memorandum to answer such questions; is that correct?

Ms. NOLAN. Senator, I want to make clear, it's not the memorandum. It's applying the memorandum to the particular situation. If I were asked that question at the White House, I would do some research. I would look at the question. And so——

Senator ROTH. But you do not know, if I understand your statement, as to whether or not this memorandum applies to RTC?

Ms. NOLAN. It does not apply—it does not list the Resolution Trust Corporation as one of those agencies. That's correct.

Senator ROTH. As I pointed out. But it does say that the list identified is only illustrative and so my question was whether or not the RTC, because of its adjudicative function, would be covered?

Senator DODD. Will my colleague yield on that one question? I think that may be stipulated. I'm not sure, but maybe if someone on the panel or someone on the staff here—I don't believe that the RTC has, to use your words, an "adjudicative function." I may be wrong on that.

Senator ROTH. Mr. Chairman, I am asking the witnesses that. That is what I am trying to determine.

Senator SARBANES. That was a line of questioning of the Senator from Delaware. I think we'd better reserve it, Senator Roth, until your next round. We've already gone well over the time. There's a vote on, and we could recognize Senator Boxer and she could complete—

Senator ROTH. Could I just make one comment?

Senator DODD. Could I make a parliamentary inquiry Mr. Chairman?

Senator SARBANES. Certainly.

Senator DODD. Is it a matter of fact that a function has an adjudicative function? That's not a debate.

Senator ROTH. I would like to point out—

Senator SARBANES. I thought the question was put to Ms. Nolan and she gave a response to it on the basis of this memo; is that correct?

Ms. NOLAN. My response, Senator, was that I could not answer that question without looking at the Resolution Trust Corporation's charter and understanding its functions, and I have not done that.

Senator ROTH. I should point out, Mr. Chairman, that this regulation covers agencies with investigative functions as well, but my time is up.

The CHAIRMAN. We have a vote underway. I think what we'll do at this point, the bells are going to ring and—

Senator SARBANES. They have.

The CHAIRMAN. I know. The second bells are going to ring, indicating that our time is very short on the roll call so I think what we'll do is take a brief recess for about 10, 12 minutes. It will give you folks a chance—

Senator D'AMATO. There are two votes—there's a possibility, Mr. Chairman, of two votes, and so that might require us, and they would have—I don't think we'll be back for at least 20, 25 minutes just to let the witnesses know.

The CHAIRMAN. Well, if there prove to be two votes, we'll alert the staff and they can tell you and then you can plan accordingly. As soon as we're free from voting on the Floor, we'll be back and we'll resume.

The Committee stands in recess until the voting period ends.

[Recess.]

The CHAIRMAN. Senator Boxer, you're next in the order and so let me recognize you at this time.

Senator BOXER. Thank you so much, Mr. Chairman, and I've been told there are no more roll call votes this evening so that means we can go right on and get this done.

The CHAIRMAN. Well, let's keep moving.

Senator BOXER. I want to say to the panel I'm very impressed with you and I have some questions that—some of them are specific and some of them are broader, so let me just get into them.

I'm grappling with some of the discrepancies between Ms. Hanson's testimony and Mr. Altman's testimony, to tell you the truth, and you might be able to clarify some of this. So I'll start off with Mr. Sloan.

On September 29, when Ms. Hanson went in to have her conversation with Mr. Nussbaum, you've already said you don't recall her saying anything to the effect that Mr. Altman sent her or that she was representing him; is that correct?

Mr. SLOAN. That's correct, and I have mentioned that I remember a reference that she said that she believed that Mr. Altman had sent Mr. Nussbaum some materials previously. That was the only reference to Mr. Altman that I recall.

Senator BOXER. So she made a reference to materials sent by him, but she never referenced the fact that he had sent her to the meeting?

Mr. SLOAN. That's correct.

Senator BOXER. And what did you exactly discuss at that meeting?

Mr. SLOAN. This was——

Senator BOXER. I don't want to get us into another scope problem so please tell me, Counsel, if I tread on anything, but what exactly did you discuss?

Mr. SLOAN. This was a brief conversation after a meeting on Waco, and after that meeting, Ms. Hanson pulled Mr. Nussbaum aside. I was in the outer office briefly, and—Mr. Nussbaum had asked me to wait—Mr. Nussbaum asked me——

Senator BOXER. What did you discuss when you came into the room?

Mr. SLOAN [continuing]. To come back in. And Ms. Hanson related that there had been eight or nine referrals, that there might be press inquiries, that the Clintons were mentioned in the referral.

Senator BOXER. Did she go into detail on the criminal referrals? Did she bring you any reading materials or notes on the criminal referrals, or she just talked about them in vague terms?

Mr. SLOAN. She just talked about them in general terms is my recollection, and she did not bring any written materials.

Senator BOXER. On October 14, you were both at the meeting where Ms. Hanson, Steiner, DeVore, Nussbaum, Gearan, Lindsey and the two of you were in Mr. Nussbaum's office; is that correct, and you were talking about these leaks?

Mr. SLOAN. That's correct.

Senator BOXER. At that time, when the meeting started, was it one of these meetings where people say, hi, my name is and this is who I am or did everyone kind of know each other so well, introductions were foregone and you just got into the meeting? Do you recall?

Mr. SLOAN. I don't recall specifically. I think that I had met the people from Treasury before and I think most of the people in the room knew each other, so I don't remember introductions.

Senator BOXER. Do you recall, Mr. Eggleston?

Mr. EGGLESTON. I do not. I recall that I did not know the people from Treasury. I had not met them before, and I specifically recall that I didn't know who anybody was except for the White House people.

Senator BOXER. They put you into the meeting and no one made formal introductions. Do you recall if Ms. Hanson said at that meeting at that point, I'm here representing Roger Altman?

Mr. SLOAN. I don't recall Ms. Hanson saying that.

Senator BOXER. Do you recall?

Mr. EGGLESTON. No, Senator.

Senator BOXER. Do you recall if she was an active participant in the meeting, Mr. Sloan?

Mr. SLOAN. I don't recall her saying anything at the meeting, Senator Boxer.

Senator BOXER. Does that agree with your recollection?

Mr. EGGLESTON. That's true. I don't want to say that she didn't, but I don't remember that she said anything at all.

Senator BOXER. So she was quiet at the meeting, and you don't recall that she said anything and said, by the way, Mr. Altman is concerned and that's why I'm here, and she made no reference to Mr. Altman at all?

Mr. SLOAN. That's correct.

Senator BOXER. I just want to ask you all a more general question, and this is—I don't know how you're going to respond to this, but it seems to me that it isn't a good thing to discuss criminal referrals, even if it's couched in the problem of a press leak. I mean, I have a real problem with that, and I've said all along that I think this whole matter could have been handled so much better had initially there been no involvement here, and simply all inquiries should have just gone to the Clintons' private attorney.

After all, this was about a matter that occurred before he was President and the First Lady was the First Lady. So I've made that statement, and, as a matter of fact, I mentioned it to Mr. Foreman, and he thought it was an interesting idea. So I would ask you—those of you who wish to comment on it—whether you agree with me that using a press leak as an excuse to talk about criminal referrals, does that give you problem—and do you think it would have been better if all these press inquiries and all of this just went to a private attorney? I'll start with you, Mr. Sloan, and then whoever wants to jump in.

Mr. SLOAN. OK, Senator Boxer, first of all, one point that I do feel it's important to correct is that it was never, ever my sense that press leaks were any kind of an excuse, a pretext or anything remotely like that. Press inquiries and press leaks were the context and the occasion of the conversation, and I never at any time had any reason to doubt that.

So I want to be absolutely clear about that. And with regard to the broader point that you raised, I have had a chance to reflect on these matters some in recent weeks and months, and there are two parts to my reaction. The first part is that I've gone over again and again the actions that took place in September and October that I was part of. And I genuinely believe that those actions were entirely proper and that they were in connection with the legitimate official function of responding to press inquiries, and I feel that very strongly, and I have gone over that, as I say, very carefully.

The second part of my reaction, though, is in light of everything that has gone on, and all of the time that we have all had to spend



on this, as I sit here now, do I wish that there had been some way of not having all of this happen, not having all of our attention focused on this so much? Of course. Do I think that in many ways the official function and the purpose of these brief conversations, do I think that they were not worth it in terms of everything that has gone on since? Absolutely. So that is a part of my reaction.

Senator BOXER. What about the notion of having a private attorney deal with a matter that occurred before the President was President? Does that have any merit to you? Can you see where that might be better, to the press talk to the private attorney?

Mr. SLOAN. There is absolutely a legitimate role with respect to private attorneys with respect to private legal matters but what was very much the context of these conversations was a governmental function, a legitimate governmental function about responding to press inquiries. And that's not—

Senator BOXER. Because the press inquiry—excuse me—was dealing with how the agencies were handling this. Is that why you feel it was appropriate?

Mr. SLOAN. And because the White House gets questions about the Clintons. If the Clintons were named in a criminal referral, if that was a news story, the White House would get questions about that. And as the Office of Government Ethics report relates, it's well established that that's a legitimate White House function to respond to those questions. So it seems to me for that kind of governmental function, it is entirely appropriate for White House personnel to be involved.

Senator BOXER. I see that my time is up and I will hold for another round.

The CHAIRMAN. Thank you, Senator Boxer. Senator Domenici.

Senator DOMENICI. Thank you, very much, Mr. Chairman.

I wonder, Mr. Eggleston, if I could give you the letters of March 2nd and March 3rd. Do you happen to have those?

Mr. EGGLESTON. Sir, I can't remember. I think Senator Mack gave me a letter of March 2nd. I do not have the letter of March 3rd.

Senator DOMENICI. Could you put the two in front of you. First, let me say to all four of you, I don't think we would be agonizing until 2:00 or 3:00 in the morning if we had received answers like you've given us today. I want to tell you that I very much appreciate the fact that when you know something, you tell us. When you don't, you tell us you don't. You've been very, very forthright.

Mr. Eggleston, the important subject matter for me—and I'll only take one subject—is my concern about the testimony before this Committee; the way the answers were given by the acting head of the RTC and what he did afterwards. Could I just review with you? I don't know why you did this, but I'm impressed with the fact that the White House seemed much more aware that we were not getting the whole story from Roger Altman than he was. And as I understand it, before either of those letters was mailed, if they were mailed on the dates stated, a meeting occurred in the White House. You were part of that. Mr. Podesta headed that team up. Could you just tell me briefly—I know this is repetitious—but what was the principal concern about the Roger Altman testimony before us?

Mr. EGGLESTON. By that time, we had actually identified three issues, and they are as follows: the first was the failure in response to a question from Senator Bond, actually, to identify the two meetings in the fall of 1993.

The second issue was in the questioning from Senator Gramm describing the February 2nd meeting, the failure to mention that one of the subjects that had been covered was the issue of recusal.

The third issue, which I think we never raised with Mr. Altman, but the third issue was the issue of how the meeting of February 2 had gotten set up. He testified the meeting had gotten set up through Mr. Nussbaum. Mr. Nussbaum said it was not set up through him, and that he had, in fact, had only learned of the meeting just before it took place. I think that's an issue that we decided was not of a sufficient level of magnitude. I don't think that Mr. Podesta raised the third issue with Mr. Altman. I think he raised the first two.

Senator DOMENICI. My recollection from somebody's testimony under oath that we have available is that Mr. Podesta also raised the subject of the criminal referrals and that he got a response from Roger Altman indicating that Roger Altman didn't want to talk about that, or it wasn't appropriate that he talk about it then. Do you recall that?

Mr. EGGLESTON. Yes, sir. When I talked about the question from Senator Bond, I think that the question was, when did the White House first learn about the criminal referrals or when did the RTC first tell about the criminal referrals? I think Senator Bond's question was tied to the criminal referrals. I was not on the call with Mr. Altman, and my recollection of what Mr. Podesta said to me afterwards is not real strong, but I have some recollection that he said something like that Mr. Altman—I want to be careful because I don't want to mischaracterize it, but that Mr. Altman said that he didn't know about them, didn't want to know about them, and Mr. Podesta had said, well, you should talk to Ms. Hanson about them. That's my recollection.

Senator DOMENICI. There is no doubt in your mind that recusal was brought to his attention and that criminal referrals were at least brought to his attention?

Mr. EGGLESTON. Sir, I know that in the meeting right before the call we raised it. I know that Mr. Podesta is an honorable man, and I think that afterwards he told me that he had raised it. So my sense—that's how I think it was raised, but I obviously don't have any personal knowledge of the call between Mr. Podesta and Mr. Altman.

Senator DOMENICI. I said a while ago that I was very pleased with the forthright answers you have given, all of you. I'm referring specifically to yours because you were asked why Mr. Nussbaum was concerned about recusal, and you ticked off a whole bunch of reasons; the politics of the situation, the press was concerned. You see, Mr. Altman—Roger Altman—Roger doesn't even do that. We ask him that question and we can't get an answer.

Now, having said that, I wonder if you would just quickly look at both of those letters. I think you looked at the one that was given to you dated March 2nd. Would you look at the other one? It's a little longer. Am I correct that neither of these letters tells

the U.S. Senate Committee on Banking that there were two issues, namely recusal and criminal referral, that were not referred to in his testimony as the subject matter of meetings?

Mr. EGGLESTON. I think they're not referenced in either of these letters.

Senator DOMENICI. As you read it, isn't there an effort to tell us there were two meetings? Would you see if you can find it, on the second one in particular?

Mr. EGGLESTON. Well, the March 3rd one appears to be about the February 2nd meeting, if I'm reading that correctly. The March 2nd one indicates that there had been meetings between the Treasury staff and the White House staff that relate to the handling of press inquiries.

Senator DOMENICI. OK. Now, you're a very forthright person and you could just as well be sitting back here where one of us sits—and maybe going through your mind is that you might do a lot better than some of us. That's probably true. But it seems to me in the March 2nd letter, there's almost an effort to try to tell us that a meeting occurred, but not to tell us what the subject was. It says "my information is that both related to the handling of press inquiries."

Now, I just want to ask you, do you think anybody on this Committee or our staff reviewing this because he's correcting the record would know anything about those meetings if he said "handling of press inquiries"? What does that mean to you, "handling of press inquiries"? Would you guess that they were about criminal referrals? I wouldn't think so.

Mr. EGGLESTON. Well, I don't see that there's a reference to criminal referral. I do want to say one thing, though, which is that I do think that the October 14th meeting related to the handling of press inquiries regarding the criminal referral—I'm sorry, Senator Domenici, I was talking when—I think that the October 14th meeting that I attended—I did not attend the September 29th meeting, and I don't know, but the October 14th meeting that I attended, my recollection is that it covered the handling of press inquiries related to the criminal referral. The letter still didn't say anything about criminal referral, but the meeting did relate to the handling of press inquiries related to the criminal referral.

Senator DOMENICI. I understand. So what he's telling us is: "it's enough for you to know that they were about press inquiries. You don't have to know what the subject was." That's the way I read it. Now, you don't have to answer that.

Mr. Klein, do you know something about these letters and the handling of the responses by Roger Altman?

Mr. KLEIN. Only that I've read them, sir. That's all I know.

Senator DOMENICI. You've seen both of those letters?

Mr. KLEIN. I have.

Senator DOMENICI. Would you agree generally, so I won't waste a lot of time, with what I've said here and with what your fellow Counsel said about these letters?

Mr. KLEIN. Yes, I would.

Senator DOMENICI. If you were preparing a letter, either or both of you, for somebody in the White House that you were responsible for, and you were attempting to answer Mr. Podesta's concerns

about Roger Altman not telling us something, is this the kind of letter you'd write?

Mr. KLEIN. Sir, again, I don't want to put myself in Mr. Altman's mind. I didn't speak to him. The information that I had, we tried to make sure that it went to Mr. Altman through Mr. Podesta.

Mr. EGGLESTON. Senator Domenici, could I say one thing, sir, in the interest of completeness and I just offer this. That is that the letter does reference the question from Senator Bond. My recollection is that the question from Senator Bond was about criminal referrals. I just offer that for the what-it's-worth category. He references in the March 2nd letter the question from Senator Bond. He does not point out in the letter that the question related to criminal referrals, but he does reference a question that did relate to criminal referrals.

Senator DOMENICI. That's more reason for him to refer to it, it seems to me, since his answer was "no" when it was asked.

Is my time up?

The CHAIRMAN. It is, and if you had just one follow-up, I'd certainly entertain that because we did that on this side but otherwise we'll go on to another round.

Senator DOMENICI. I would also ask both of you, as competent lawyers who work in this field a lot, do you notice anything, inferential or otherwise, in either of these letters that would indicate to this Committee that more corrections are to come? Do you see anything in there that would indicate to us that you've got to fix the record some more?

Mr. KLEIN. I don't see it. Obviously, the letters speak for themselves. You can assess them as well as I can.

Senator DOMENICI. Let me ask again, if this Committee, under the Chairmanship of Senator Riegle, were wrapping up that February 24th hearing and got these two letters; is there anything to indicate that maybe he's got some more things to correct? To me, I would think it was over with, that there aren't any more.

Mr. KLEIN. Again, I don't know. He said he had conversations with people on the Committee. I can tell you what the letter says, but you can read it for yourself.

Senator DOMENICI. Thank you very much.

The CHAIRMAN. Senator Campbell. Thank you for your patience.

Senator CAMPBELL. Also as my friend Senator Boxer has said, I would like to commend this Committee. I think they've tried to answer in a very forthright manner and to the best of their recollections and very openly. I know it's difficult to answer some of the variety of questions that have been asked. Some of them are reflective of the members' former professions of being criminal prosecutors. Some of them are kind of fishing expeditions, I guess, hoping you're going to run into a hook. And I personally liked Senator Dodd's questions; did you do it or didn't you do it, yes or no. And those are the kind of answers I understand very well when they're asked, but I know you have to answer a big variety of them.

Mr. Eggleston, I wanted to know a little bit more about the workings of the White House Counsel. Did I understand you to say there's 12—a total of 12 people in there?

Mr. EGGLESTON. Mr. Campbell, you might—Mr. Klein is senior to me. He's the Deputy. I'm an Associate. He probably knows more

about the workings of the office than I do, and if you don't mind me kicking this to him——

Senator CAMPBELL. That's fine. I'm really interested in the chain of command of who does the assigning of issues and who gets advice from who before moving on any issue.

Mr. KLEIN. Typically, Senator, the Counsel to the President, Mr. Nussbaum first, now Mr. Cutler, has overall responsibility for matters. The way, I think, both gentlemen worked was as follows—at least when I was Deputy, and I was only Deputy since December of last year—and that is on many matters, they would deal directly with an Associate Counsel who had—for example, on an ethical matter deal directly with Beth Nolan, on a matter involving some Constitutional issue, might deal directly with Cliff Sloan and so forth. There were other matters that they would assign to me, and then I would reassign some of those or supervise some of those. And that's the way it worked basically, sir.

Senator CAMPBELL. If you were Counsel who was assigned a certain area, then you didn't need direction from Mr. Nussbaum. Is that the way it worked?

Mr. KLEIN. Again, it would depend on the activity. I think most of the people kept Mr. Nussbaum informed of what they were doing, although, like any people, they exercised some discretion on their own.

Senator CAMPBELL. Who directed Mr. Podesta to call Mr. Altman?

Mr. KLEIN. My understanding of that is that when these events occurred, there was, I think, as has been said here, some concern, Mr. Eggleston, myself other people. The Chief of Staff, Mr. McLarty, was obviously concerned this matter be dealt with accurately and straightforward and I think he asked Mr. Podesta to kind of get on top of this. That's my impression. You can check with the two of them.

Senator CAMPBELL. Would you give me a little rundown again? The press said it took 7 days after the hearing of February 21st for that call to be made and you corrected that and said it wasn't. It was more like 5 and it was because it started on a Thursday and Mr. Nussbaum was in Mexico. Was that——

Mr. KLEIN. That's correct. Basically, what Mr. Eggleston said which was that he was at the meeting—he was at the hearing on Thursday the 24th, and he——

Senator CAMPBELL. And you felt that you needed his approval for Mr.—maybe I'm mixed up a little bit here, but Mr. Podesta is a Staff Secretary, is he not?

Mr. KLEIN. He is a Staff Secretary, yes, sir.

Senator CAMPBELL. Did he need your approval or Mr. Nussbaum's approval to make the call?

Mr. KLEIN. I don't think he needed anyone's approval. I think certainly the people on our staff thought it was very important to report this information, to have Mr. Nussbaum there. The information essentially—the hearing ended, obviously, on the end of the day Thursday. The information was in the press on Friday. I learned of some of the information from Mr. Sloan later Friday afternoon. Monday morning, Mr. Nussbaum was going to be back

in the office and we got right on it. Tuesday afternoon, we made the phone call.

Senator CAMPBELL. Even after that call, it took about another 3 weeks to get the record corrected; is that correct?

Mr. KLEIN. Well, there was a series of follow-up letters. I don't have the dates in front of me.

Senator CAMPBELL. Were you involved in consultations with Mr. Altman during that period of time?

Mr. KLEIN. No, sir.

Senator CAMPBELL. Who was? Was there anybody in the White House Counsel who was?

Mr. KLEIN. Nobody in the White House Counsel, to my knowledge. The only person I know who had that original phone call was Mr. Podesta.

Senator CAMPBELL. Ms. Nolan, you were part of the White House team that discussed whether the White House should correct Mr. Altman's testimony; is that correct?

Ms. NOLAN. Senator Campbell, I was in one discussion about it.

Senator CAMPBELL. Would you tell us who was also in that discussion?

Ms. NOLAN. Mr. Klein, Mr. Nussbaum and, I believe, Mr. Eggleston.

Senator CAMPBELL. Was there any difference of opinion or a feeling that perhaps it was unnecessary to make any part of corrections—when you had that meeting, was there sort of a unified approach when you ended up about what corrections should be made or—

Ms. NOLAN. The part of the discussions I was in, I don't think we reached a final conclusion. What I recall was that the issue was being discussed. This was the first day that Mr. Nussbaum was back, that Monday. And I just recall that we were exploring the issue, so I don't recall a particular conclusion.

Senator CAMPBELL. After it was corrected, did Mr. Altman's March 2nd letter to correct the record reflect what you had discussed in that meeting?

Ms. NOLAN. Senator—

Senator CAMPBELL. To the best of your recollection.

Ms. NOLAN. I'm not familiar with the letter and I didn't participate in follow-up meetings.

Senator CAMPBELL. Thank you, Mr. Chairman. I'll yield.

The CHAIRMAN. Thank you, Senator Campbell. Senator Hatch.

Senator HATCH. Thank you, Mr. Chairman.

I just want to say, having listened to all of you, I think the White House is served well by its Legal Counsel down there at this time, at least the four of you.

But let me ask a couple of questions, Mr. Eggleston, if I can direct them to you, maybe you can help us. You understood from your discussions with Mr. Nussbaum following the February 2nd meeting at the White House that he was very concerned that if Mr. Altman recused himself, Jack Ryan and Ellen Kulka would be in charge of decisionmaking in the Madison Guaranty case; is that right?

Mr. EGGLESTON. Mr. Hatch, he was not—he was never concerned about Mr. Ryan. There was never any discussion.

Senator HATCH. There was concern about Ellen Kulka?

Mr. EGGLESTON. Yes.

Senator HATCH. And as I understand it, in your deposition, you did say "Mr. Ryan, of whom he had no opinion. Of course, actually it was my understanding with Ryan, she is just involved in the process, but I don't want to overdo this." You were asked the question "did Mr. Nussbaum state a concern that absent Mr. Altman's involvement in Madison-related matters it would be left in the hands of Mr. Ryan, whom he didn't know, and Ms. Kulka, of whom he had a low opinion?" And your answer was "yes—I mean I should say—and earlier I sort of qualified this—I think these conversations were pre-February 2nd, my best recollection is that these were pre-February 2nd." Then the next question was, "was this an issue that Mr. Nussbaum appeared to be concerned about?"

"Answer: I can only tell you what he said.

"Question: You can't tell us in your experience whether he was more concerned than he was about most issues or less concerned?

"Answer: I can't. It was just an issue.

"Question: Did any other White House staff members, to your knowledge, state similar views or concerns before February 2, 1994?

"Answer: Not that I recall. I don't think anybody else had any knowledge of Ms. Kulka or Mr. Ryan," et cetera.

Now, you took part in the meeting with John Podesta and Todd Stern regarding the hiring of Jay Stephens by the RTC?

Mr. EGGLESTON. Yes. I'm saying yes. I sort of vaguely remember.

Senator HATCH. You were there?

Mr. EGGLESTON. Yes.

Senator HATCH. OK. And in this meeting, Mr. Podesta wanted to find out if Mr. Stephens had been hired; right?

Mr. EGGLESTON. Sir, I remember making a call to Ms. Hanson either on the 24th or on the 25th to ask about that question. I'm sorry, sir, I don't quite remember this meeting. I probably would have made that call at the request of somebody. It may well have been Mr. Podesta.

Senator HATCH. Did you understand from this meeting that Mr. Podesta would have preferred that Mr. Stephens not be working for RTC on the Madison Guaranty matter?

Mr. EGGLESTON. I can only describe it this way. People were generally stunned that the RTC would have hired Mr. Stephens, and I don't think that anybody I heard said we should do something about it or something like that. People around the White House were stunned that they would have hired Jay Stephens.

Senator HATCH. Would have hired Jay Stephens.

Mr. EGGLESTON. Yes, sir.

Senator HATCH. On February 25, the day Mr. Altman decided to recuse himself from the Madison Guaranty matter, you called Jean Hanson, as you just said, to confirm that Jay Stephens had been hired?

Mr. EGGLESTON. Yes, sir.

Senator HATCH. And you expressed to Ms. Hanson the White House's displeasure?

Mr. EGGLESTON. I don't think I did.

Senator HATCH. You don't think you did.

Mr. EGGLESTON. I think I just—I was very sensitive to this issue by the morning of the 25th. I think I called her. I asked her whether it was public information. I told her that it was—that Mr. Altman had testified the day before that it was Pillsbury, Madison & Sutro. I called to ask her whether it was Jay Stephens, the attorney, and I think I said to her, I assume that's public information. By the morning of the 25th, I'm sensitive to what information I'm getting from the Treasury about this issue, and I don't think I did convey back to her that we were unhappy.

Senator HATCH. Did you discuss with Ms. Hanson who at the RTC would be making the—who actually would be making the decisions in the Madison Guaranty matter now that Mr. Altman had recused himself?

Mr. EGGLESTON. I did not.

Senator HATCH. I believe you said earlier that you had discussions with several White House officials about the hiring of Jay Stephens. Could you name with whom you've had those discussions?

Mr. EGGLESTON. The ones that I really think about that I talked to—I indicated to you earlier I couldn't remember having a meeting. I remember talking about it with Mr. Podesta and Mr. Stern. Mr. Stern is Mr. Podesta's Deputy. They have offices next to each other.

Senator HATCH. Sure. Let me ask you some questions about a February 28, 1994 memo from you to Harold Ickes, the White House Deputy Chief of Staff. First, let me ask you, are you aware that the very next day, March 1st, Mr. Ickes forwarded your memo to the First Lady?

Mr. EGGLESTON. I am now aware. I was not aware of that then.

Senator HATCH. You testified that Mr. Ickes asked you to prepare your February 28th memo. Did you also talk with Mr. Nussbaum about this memo?

Mr. EGGLESTON. I don't recall. I would have prepared a memo like this only at the request of Mr. Ickes. I would not have necessarily checked it with Mr. Nussbaum.

Senator HATCH. Would Nussbaum have seen it? Would he have approved it?

Mr. EGGLESTON. He would not necessarily—I'm sorry?

Senator HATCH. But he looked at it?

Mr. EGGLESTON. He would not have necessarily approved it. I may have given him a copy.

Senator HATCH. The reason I ask you is because you said in the last paragraph here, "we intend to nominate a person for the position of CEO for the RTC within the next few weeks," and you said you learned that from Bernie Nussbaum himself.

Mr. EGGLESTON. Yes, I think that's right, but I think I learned that not in connection with the preparation of this memo. I think I knew that independently.

Senator HATCH. On the last page, page 6 of your memo, it addresses the question "who at the RTC would be the decisionmaker in whether to bring a civil action arising out of the failure of Madison Guaranty?" Now, this question had been a subject of intense interest at the White House ever since Mr. Altman first raised the prospect that he would recuse himself; isn't that right?



Mr. EGGLESTON. Well, yes, although—certainly, yes, sir.

Senator HATCH. Now, your memo points out that both Jack Ryan and Ellen Kulka are “career officials.” Right?

Mr. EGGLESTON. Yes, sir.

Senator HATCH. That means, doesn’t it, that they were not appointed by President Clinton?

Mr. EGGLESTON. They were not appointed by President Clinton. I think that they got their jobs—I think that their hiring into their jobs as head of RTC—I think, sir, and you should ask someone else—but I think that they got their jobs in the RTC during the Clinton Administration but they—

Senator HATCH. But they were not appointed by the President?

Mr. EGGLESTON. They were not appointed to the OTS by the President. I think the White House had some role in them being moved to their jobs at the RTC, sir, I believe.

Senator HATCH. What it means by “career officials” is that they have job security, they can’t be fired.

Mr. EGGLESTON. What I meant by it is that they were long-term Government officials. That’s what I meant.

Senator HATCH. And you pointed out in your memo that Mr. Ryan and Ms. Kulka were career officials. Isn’t the reason you did is because you wanted Mr. Ickes, and anyone else at the White House who read your memo, to understand that neither of these officials could actually be counted on to protect the interest of the White House? Isn’t that basically true?

Mr. EGGLESTON. Well, sir—

Senator HATCH. I’m not trying to put words in your mouth, but, I mean, basically that’s what you’re pointing out to them.

Mr. EGGLESTON. On that issue, sir, I have to disagree. I think that they were going to decide whatever they had to decide. I don’t think we were asking anybody to protect—

Senator HATCH. But that was the in-between-the-lines message that you as an attorney were sending, that, look, these are not people you can rely on, these are career employees. And you may have even known that Mr. Nussbaum thought that Ms. Kulka was a tough, aggressive lawyer from his private sector experience.

Mr. EGGLESTON. I did know that, but I was not trying to send some message between the lines. I was just saying who they were.

Senator HATCH. But you obtained that knowledge that they were career officials from Jean Hanson; right?

Mr. EGGLESTON. Sir, I first obtained this information in a Legal Times article that was written about Ms. Kulka in January of 1994. There was a big story about how she had gotten her job and that was the first time I really learned about who Ms. Kulka was and who Mr. Ryan was. There was a Legal Times of Washington story in January.

Senator HATCH. I notice my time is up. I have two more questions, Mr. Chairman. I have two more questions that would tie this down, but I—

The CHAIRMAN. Pardon?

Senator HATCH. I notice my time is up but I have two more questions that would tie this down.

The CHAIRMAN. How long do you think they’ll take, Senator Hatch?

Senator HATCH. I hope not much more than a minute, minute and a half.

The CHAIRMAN. Why don't you take them, then.

Senator HATCH. I think it might be good to do that. You next point out in your memo that if the person soon to be nominated were to recuse himself from the Madison Guaranty matter, then Mr. Ryan and Ms. Kulka would remain in charge; right?

Mr. EGGLESTON. Yes, sir.

Senator HATCH. And your purpose in making that point, again, seems to me, would be to highlight that the White House might want to address the issue of recusal with any potential nominee of the CEO of the RTC before naming that person as CEO; right?

Mr. EGGLESTON. Sir—

Senator HATCH. Because you don't want to get into that again.

Mr. EGGLESTON. Sir, I assumed that whoever came up who was a Presidential appointee was going to be asked by the Senate to recuse themselves from that matter. That's actually what I'm conveying here. I thought whoever got nominated by the President would be forced to recuse themselves so that the decision would remain with Ms. Kulka and Mr. Ryan. That's actually what I thought was going to happen. Since we haven't nominated somebody, it hasn't happened.

Senator HATCH. You pointed out that your February 28th memo is a revised version. Can you tell me how it differs—in what respect it differs from the original version and did Mr. Ickes review the original version and ask you to make changes and, if so, what changes?

Mr. EGGLESTON. I was asked this earlier, and I'm pretty vague on this—

Senator DODD. Mr. Chairman, I interrupt. I think this is one area that, I think, does get into the scope question. I would just ask the Chair—

Senator HATCH. It does? Just let me limit it to the last part, then.

Mr. EGGLESTON. It's not going to get into the scope because I don't remember the answer. I don't remember. I think that—my best recollection, which may not be accurate, is that Mr. Ickes looked at it, had a few more questions and asked me to add some stuff. I don't remember what he asked me to add, and I don't have a copy of the unrevised version. I've looked in my files and I don't have them.

Senator HATCH. Thank you for your indulgence, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Moseley-Braun.

Senator MOSELEY-BRAUN. Thank you, Mr. Chairman. To this panel, I must say we were very fortunate to have so forthright a panel, given the fact that we were here so late last night and so I want to add my thanks and congratulations to the members of this panel for the testimony that you've given this afternoon.

I'd like to pick up where Senator Roth left off. And actually put for the record, because I don't know, Mr. Chairman, if it was actually received for the record, the ethics memoranda issued by the Counsel for the President, Mr. Nussbaum—well, several of them, actually, that were issued—I'd like to have them received for the record and by that, I mean the February 22nd ethics memo, the

March 9 ethics memo, the May 4th ethics memo and the follow-up of July 2.

The CHAIRMAN. Without objection, so ordered.

Senator MOSELEY-BRAUN. Thank you.

Senator Roth asked Ms. Nolan a couple of questions and I'd like to follow up because I think there may have been a little miscommunication about these memoranda. Specifically, on page 5 of the February 22nd ethics memoranda, prohibited contacts with agencies. When it talks about the Department of Treasury, the memoranda says "in light of the sensitive nature of matters before some of the component agencies of the Department of Treasury"—it goes on to essentially say "any written or oral communication to the White House concerning pending investigations or cases must be directed to the Counsel to the President."

And then it goes on. The policy does not provide, Ms. Nolan or I'd like your response—there was an implication in the earlier question that the policy prohibits contact by White House personnel with agencies of the Department of Treasury. And that is not—I don't think that's the reading that I get from the context, the full context of these memos, and I would like to ask if that was your understanding.

Ms. NOLAN. Yes, Senator. Generally, the memoranda, the four memoranda put together that you just mentioned provide that in certain cases, communications with the agency must go through the Counsel to the President or must be approved by the Counsel to the President. But they generally don't prohibit contact all together. I'd also—since we're on this topic, if I may—just say as part of the perils of answering questions that you haven't had a chance to research yet, I think I might have said that I thought criminal referrals were adjudicative, and I really think those are probably investigative matters rather than adjudicative.

Senator MOSELEY-BRAUN. So with regard to that issue—that was going to be my second question, because there was some question about the response you had given earlier, specifically regarding RTC and Treasury procedures, and I think it's important for the record that that clarification be made. I would then ask the question with regard to the procedures, and I'm just going to ask a question, and I'd like your answers seriatim, or one at a time, with regard to your own involvements and contacts with the agencies we have discussed. Did you follow the procedures set out by the White House Counsel in these four memoranda?

Ms. NOLAN. My contact with Mr. Foreman was initiated or requested by Mr. Nussbaum, and therefore, if it falls within the category at all, which I'm not sure it does, but if it does, it was certainly authorized by the Counsel to the President.

Mr. SLOAN. The answer is yes.

Mr. EGGLESTON. For me, the same answer as Ms. Nolan.

Mr. KLEIN. Same answer for me.

Senator MOSELEY-BRAUN. All right. Mr. Sloan, with regard to—you received a phone call—you had a contact on the 29th of September with Ms. Hanson—actually, Mr. Eggleston and Mr. Sloan had a contact with Ms.—no, I'm sorry. Ms. Hanson grabbed Mr. Nussbaum on the 29th of September, and he brought you, Mr. Sloan, into the conversation?

Mr. SLOAN. That's correct, Senator.

Senator MOSELEY-BRAUN. Was that—you thereafter had a contact with her following that conversation on the 30th of September?

Mr. SLOAN. That's correct.

Senator MOSELEY-BRAUN. And the 6th of October?

Mr. SLOAN. I think it's the 7th of October.

Senator MOSELEY-BRAUN. Seventh of October. Did you advise or report to Mr. Nussbaum with regard to each of those contacts?

Mr. SLOAN. Yes, I did.

Senator MOSELEY-BRAUN. And then finally, with regard to the October 14th meeting, were the procedures of the—the White House procedures followed with regard to that meeting as well?

Mr. SLOAN. Yes, they were. The request for the meeting was directed to Mr. Nussbaum, the Counsel to the President. I also received a call from Ms. Hanson saying that the press people had set up the meeting, and then I informed Mr. Nussbaum. He already knew about it.

Senator MOSELEY-BRAUN. And with regard to the February 2nd meeting, were the procedures followed in regards to that meeting as well?

Mr. EGGLESTON. That's probably—yes, well, Mr. Nussbaum attended the meeting and was notified about the meeting shortly before it took place.

Senator MOSELEY-BRAUN. And so I guess I'll just do a summary question, then, with regard to this entire panel. Again, there's—a lot of this ground has been covered and these questions have been asked, I just want to make sure the record was clarified with regard to specifics of the procedures—the ethics procedures that are set forth for White House Counsel.

In your opinion, were all of the procedures—were the procedures followed with regard to the activities of the White House Counsel's staff in regards to any of the contacts involving the Whitewater/Madison Guaranty matter? I may have asked this question already. Did I? This is a question I asked already, so strike that. Strike that.

I have no further questions, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Moseley-Braun. I want to make sure, has everybody in this round had an opportunity, other than Senator Murray? Is she the only one who remains who has not had a chance?

Senator DODD. We all know what that chair is like. I want you to know that. We've all been there.

Senator SHELBY. Mr. Chairman, I want to tell you, I think Senator Murray was right about holding us to seven minutes. Otherwise it would be 10:00 or 11:00 at 10 minutes.

Senator MURRAY. I'm getting really used to talking to empty chairs and nobody out here. That's all right.

Mr. Eggleston, did you undertake legal research to confirm that it was appropriate for you and Mr. Sloan to be receiving the information that Ms. Hanson was providing you?

Mr. EGGLESTON. I did undertake some admittedly limited legal research.

Senator MURRAY. And you concluded—

Mr. EGGLESTON. I concluded under the circumstances it was appropriate.

Senator MURRAY. So all contact was appropriate?

Mr. EGGLESTON. Well, the issue—I'm sorry. The issue I was looking at was the issue of the receipt of information about the criminal referral. I didn't research the other issues about the contacts.

Senator MURRAY. But the criminal referral communications were proper from everything you looked at?

Mr. EGGLESTON. From what I understood about what the communications were, yes.

Senator MURRAY. Ms. Nolan, what is your title?

Ms. NOLAN. Associate Counsel to the President.

Senator MURRAY. And you've been in that position how long?

Ms. NOLAN. Since February 1993.

Senator MURRAY. And you previously taught law?

Ms. NOLAN. That's correct.

Senator MURRAY. Legal ethics, right?

Ms. NOLAN. Legal ethics, Constitutional law and a course in Government ethics.

Senator MURRAY. I understand that prior to that you served in the Reagan Administration at the Department of Justice.

Ms. NOLAN. Yes, I was a career attorney in the Department of Justice, Office of Legal Counsel.

Senator MURRAY. And you're a graduate of Georgetown University Law Center.

Ms. NOLAN. Yes.

Senator MURRAY. With honors?

Ms. NOLAN. Yes.

Senator MURRAY. That's fairly impressive. I have a question for you as Associate Counsel to the President, steeped in ethics, as I think Senator D'Amato stated. What do you think of the "de facto recusal" of Mr. Altman? Did he or anyone else in the White House commit what my mother would call a mortal sin in terms of ethics?

Ms. NOLAN. No, I don't believe he or anyone else in the White House committed a mortal sin in terms of ethics and I hope in terms of nothing else as well.

Senator DODD. Is that according to the new Baltimore Catechism? [Laughter.]

Senator MURRAY. Ms. Nolan, you spoke with Mr. Foreman, the Treasury Ethics Officer. I asked him about this earlier, in terms of the issue of recusal. Can you tell us what the substance of that conversation was?

Ms. NOLAN. Yes, I can. Mr. Foreman and I discussed the policies, the general standards that would apply to recusal of the Presidential appointee and he identified the issues he was going to look at, and he informed me, as I said in my opening statement, that he would be speaking with the ethics official at the RTC and with the Office of Government Ethics. We discussed those standards quite generally.

Senator MURRAY. Did he give you any specifics regarding Mr. Altman's situation at that time?

Ms. NOLAN. I don't think we talked in any detail about Mr. Altman's situation. We didn't identify the particular factors. I was particularly concerned in our first conversation about the possibil-

ity that the standards of conduct or some other law might be interpreted to require the recusal of a Presidential appointee from all matters that touch upon the President or the White House. There were other factors that might be considered, but those are the ones that were really left to the ethics officials of the agency.

Senator MURRAY. Did he ask you to offer an opinion specifically on whether Mr. Altman should recuse himself.

Ms. NOLAN. No, he didn't.

Senator MURRAY. Did you offer an opinion?

Ms. NOLAN. No, I did not.

Senator MURRAY. Maybe to sum up here—we're kind of losing perspective. We've been here for 4 days and we've been discussing this issue from absolutely every angle, and I'm beginning to think that for 6 solid months, the White House discussed nothing but recusals and contacts and Madison. Can somebody bring me back to perspective on that?

Mr. KLEIN. I can tell you the White House Counsel's Office worked on a wide range of matters, and this is a very small part of the business we dealt with. We interface with all the Government agencies on legal issues on a daily basis. I would say, as Ms. Nolan herself has said, she had no involvement in these matters. Mr. Sloan had no involvement in the spring and so forth, and that's true of all the other people who aren't here. So in a funny way you're looking through a very small end of the telescope here.

Senator MURRAY. So the White House wasn't sitting around for days discussing recusals?

Mr. KLEIN. Not at all.

Senator MURRAY. It's a very small part of what you talked about—it's a very big part of our week here but it's a very small part of what you talked about. Is that fair to say?

Mr. KLEIN. I think that's correct, ma'am.

Senator MURRAY. And finally, I've heard a lot of theories, conspiracy or otherwise, about why the White House had an interest in Altman's recusal. I'm not an attorney here—I'm beginning to think I'm not the only one that's not an attorney in this room—so maybe this is a simple question, but why such a big deal about recusal?

Mr. KLEIN. It depends when you say "why such a big deal?" I think you have to look at the context, and I think I tried to express some of this before. At the time, there was a public hearing going on with respect to Ricki Tigert. It was my view, and I think the view of most of my colleagues, that the Minority was trying to extract a blanket recusal for political purposes. In other words, somehow we were going to tag a nominee of this Administration and in that way infer some negative thing about the President.

I think that is a concern and, frankly, I think it's a misuse of the whole way to approach recusals. That same concern then got transferred with respect to Mr. Altman. I think those were very real concerns. I don't want to overstate them. I don't think this took a great deal of our time. It is the subject matter of the hearing, so it seems that way, but those were the concerns. And as Neil said—Neil Eggleston said before, we were about to nominate a Deputy Attorney General, Ms. Jamie Gorelick. We anticipated that the Minority would then say, Ms. Gorelick, you're a Presidential ap-

pointee, you should recuse yourself. We're going to replace an appointment at the RTC. The same issue would come up, and I think people were using the issue of recusal for political gain and I think that was our response.

Senator MURRAY. And is it fair to say if everybody recuses themselves, nobody can do this issue?

Mr. KLEIN. I agree with that and I think those matters should be decided carefully, thoughtfully by decisionmakers and should not become a political football.

Senator MURRAY. Thank you.

The CHAIRMAN. Thank you.

Let me just for the moment, if I may, give everybody an indication of what my intention is for the remainder here this evening, and that is we've got some individuals who want to pose some additional questions on this side. Senator Sarbanes has not had a round and wants to do so. Senator Shelby does.

Senator SHELBY. Mr. Chairman, I've just got two short questions when it comes to my time.

The CHAIRMAN. Senator Roth does. Then let me tell you what my intention is here, partly because we've been at it late into the evening now 2 days running, and I think everyone is tired, including the stenographers and ourselves obviously. What I'm intending to do is finish with this panel as promptly as we can, and then I want to call the next panel. I want to swear them, take their opening statements, and start in with them. I don't think we're going to be able to finish that tonight and so then we'll carry them over until tomorrow morning I think under the circumstances, that is weighing everything—as I've been discussing with a lot of different people, I think that's our best course of action here.

In any event, I just want to announce that intention so that everybody can plan accordingly. It would be very helpful to us, consistent with everybody having the chance, to cover what they need to with this panel, so that we can go ahead and get this done so we can get to our next panel as quickly as possible.

Senator MURRAY. Mr. Chairman, I have a question. If you carry these people over to tomorrow, what does that do to tomorrow's schedule?

The CHAIRMAN. We're scheduled to start at 9:30 a.m., and I'm certainly open to starting sooner than that if it's practical for the Members here, and I'm happy to talk to people about that. I'm willing to start at an earlier hour. My intention is to get through these panels in the same fashion and manner in which we've been operating up until the present time.

Senator BOXER. Mr. Chairman, is there a way—if we're going to have—I understand you're going to start the two tonight.

The CHAIRMAN. Yes.

Senator BOXER. And when everyone is tired, you're going to break or you're going to break at a certain time?

The CHAIRMAN. No. I'm going to make a judgment as to an hour this evening. We're not going to be able to finish I don't think, without going into the dead of night. I don't think that's a sound course of action.

Senator BOXER. Can we fold these two into another panel in the morning rather than have a whole separate panel and throw us off our schedule?

Senator MOSELEY-BRAUN. Mr. Chairman, would it be appropriate—can we just break for a minute and discuss this?

The CHAIRMAN. I'd be happy to talk to you informally. I don't want to break for that purpose. We've got Members that want to ask questions. We've got witnesses sitting here.

Senator DODD. Mr. Chairman, just a suggestion. Is the first panel tomorrow also White House? What about the possibility of then trying to combine, maybe, the two this evening, what they haven't finished, with the first panel.

Senator BOXER. That's what I just suggested.

Senator DODD. Did you make that suggestion?

Senator BOXER. Yes. But it sounded very good when you said it again.

[Laughter.]

Senator DODD. What?

Senator BOXER. It sounded very good when you said it.

Senator D'AMATO. I'm willing and I speak for our side, to accommodate—to think we can finish this off, let's get our witnesses sworn in, let's have their opening statements, you save time. Start punctually at 9:00, try to go through them as quickly as possible. If you don't want to do that, why then, let's just keep plowing ahead.

Senator BOXER. I'd rather plow ahead.

Senator D'AMATO. If you want to plow ahead you're going to be here a long time. Because then I'll tell you what takes place. People do not—they don't have an incentive to say at 9:00 or 9:30 we can be out of here, because we know we're going to be here until 12:00 or 1:00.

Senator SARBANES. Why don't we go ahead now?

The CHAIRMAN. If I may say so, I'm attempting to reconcile a number of different issues and points of view. I'd like a little latitude on this issue, on this scheduling matter. I think what I'm posing to you is a reasonable way to move this. I'd be happy to talk to people individually. I don't think we're going to solve it in this kind of a group discussion. Right now I'd like to call on the next person waiting to ask questions.

Senator SHELBY. You're the Chairman, you make the decision.

Senator SARBANES. Mr. Chairman—

Senator MOSELEY-BRAUN. Mr. Chairman, we'd just like you to withhold judgment until we've had a chance to discuss it a little bit with you.

The CHAIRMAN. I will do so. Did you want to go next, Senator D'Amato?

Senator D'AMATO. Senator Gramm.

The CHAIRMAN. Senator Gramm is recognized.

Senator GRAMM. Thank you, Mr. Chairman.

Mr. Klein, I want to go back to your deposition. You were asked in your deposition the following question: "In other words, your understanding was that Mr. Altman was not going to raise the recusal discussion on February 2nd in whatever letter he wrote?" And your answer was, "that was my understanding." You then go



on to say, "I feel reasonably confident that I probably said something to the effect of if he's going to write a letter, I don't understand why he doesn't put this recusal point or something to that effect in the letter." Now, is that your recollection of your deposition?

Mr. KLEIN. That's correct, sir.

Senator GRAMM. Do you have any further information as to why Mr. Altman did not put the recusal issue in the letter of March the 2nd?

Mr. KLEIN. Other than the testimony I heard here yesterday, no, sir.

Senator GRAMM. I've tried to look at this in every way. He's writing a letter to clarify the record. You don't have any doubt that when he wrote that letter, he knew that recusal discussions had occurred. He had been in on at least two meetings. There may have been a dozen telephone calls, some of which he was involved in. Your boss had called him directly and said, you didn't mention recusal. You have no doubt whatsoever that he knew about recusal?

Mr. KLEIN. Based on the information I had, I don't have any real doubt about that, sir.

Senator GRAMM. Well, it seems to me that there is only one inference that this Committee can draw from that. Let me just speak for myself. There's only one inference I can draw from it, and that is that for some reason, which we do not know, and my guess is we'll never know fully, Mr. Altman desperately did not want this Committee to know that this discussion was going on at that point. And that gets me back to this issue: what is the big deal about recusal?

We had a discussion going back and forth earlier when I was here between one of our Members and Mr. Eggleston about the fact that everybody knew that Mr. Altman was in phantom recusal. Everybody knew that he was going to recuse himself if anything happened. Everybody knew that these civil servants below him were the kind of people that weren't going to let him get away with any politics or hanky-panky. Everybody knew that, but the problem is whatever kind of logic you try to impose on top of this—and I think the natural inclination of the human mind is to try to impose logic—the bottom line is the facts show clearly and convincingly that tremendous exertions of effort were undertaken to prevent this Committee, and perhaps the world, from knowing that the recusal issue was being discussed. Mr. Ickes asked Ms. Hanson, "how many people were told you were discussing it? It's good that it's a limited number. We don't want people to know about it."

We have diaries written from the heart that Mr. Altman was told that it was unacceptable to recuse himself. He was under intense pressure, we're told. The problem is, if it didn't matter, what was all this about?

I know you can't answer that question, but I'll just give my opinion. It is clear to any objective observer that Mr. Altman desperately did not want this to be known and was willing to risk being in a position where he could be accused of being less than honest—if it were 12:00 last night I would have said "lying"—to a Committee of Congress, knowing that that is a violation of law.

And I think that any reasonable person has to give that heavy weight in this discussion. This whole idea of phantom recusal—this whole idea of, well, he really recused himself but he didn't want to tell anybody about it. He didn't want them to know that he had recused himself. I know we can say those things. I know it's convenient to talk about them, and I know this is the Congress and there's a different standard of language we have here than in the real world, but nobody believes that.

Mr. KLEIN. Senator Gramm, can I respond to that?

Senator GRAMM. Yes, sir.

Mr. KLEIN. I can't put myself in Mr. Altman's mind, but I think I can say something for me and my colleagues here, and that is, as far as the White House was concerned, I think the evidence is quite strong that we were not trying to hide this fact of recusal, and what I mean by that is, Mr. Eggleston has testified, and there's no dispute about it, he called the day before the hearing with respect to the recusal.

Senator GRAMM. Mr. Klein, I don't in any way dispute that. The person who tried to hide this, desperately tried to hide it, was Mr. Altman. He went to incredible lengths to hide it and, in fact, produced a situation where now there is clear and convincing evidence that he knowingly in that March letter withheld very important information.

And while I'm on that subject, let me say that we've had many people testify before this Committee, but if I were in the White House, you're exactly the kind of person I would want to be a counsel for me. I appreciate the direct way you answer questions. I appreciate the way you get to the bottom line. And my guess is, had Mr. Altman had people like you working directly for him or had he been a person like you, we wouldn't even be here.

Now, I want to go back to you, Mr. Eggleston, to discuss this meeting on February 3rd, a meeting we know almost nothing about. You were there. We know, at least by sworn testimony, that Maggie Williams was the person that Roger Altman called, and we have her recollection of the call: "Well, Roger called, and he said to me, I decided not to recuse. And he said, I want to tell some people in the White House that." I guess he thought it was going to be glorious news. And then she says—which is very interesting to me—"I remember thinking to myself, so tell him. Big deal." She didn't literally say "big deal." But people out on the street would have said "big deal." This is a sworn statement. You don't say "big deal" in a sworn statement. And then he said that he's on his way to his meeting and get some people together, because I want to come over and tell them. Was the tenor of that meeting that Mr. Altman came in and said, I have glorious news, I've decided not to recuse myself?

Mr. EGGLESTON. Sir, my recollection is that—I can't remember how I got to Maggie Williams' office, although it's about 10 yards from Mr. Nussbaum's office. It's in the same general location of the west wing.

Senator GRAMM. You walked over there, though?

Mr. EGGLESTON. I must have—let me just say also I don't think that Mr. Altman was thinking about meeting—

Senator GRAMM. Let me go back—Mr. Altman came in. You were there. What did he say and how did he say it?

Mr. EGGLESTON. He came in. He did not sit down. As I recall, he stood right inside the door, closed the door and said, quietly without any particular emphasis, I've decided not to recuse or I've decided not to recuse for now—I can't quite remember which one—and turned around and walked out. I think he was——

Senator GRAMM. That's all he said, he came in and said, I've decided not to recuse, and then he walked out. Was there applause?

Mr. EGGLESTON. Sir, I think he walked out and the meeting—if you call it a meeting, no one was sitting—lasted about 10 seconds. There was no applause.

Senator GRAMM. No one said a word?

Mr. EGGLESTON. I do not remember anyone saying anything back to him. I don't think he was there long enough.

Senator GRAMM. But people were still there when Ms. Hanson showed up, who had been beeped to come out of her luncheon.

Mr. EGGLESTON. Ms. Hanson showed up within seconds of the time Mr. Altman left.

Senator GRAMM. Is that not the meeting where Mr. Ickes says to her, how many people know about this recusal thing, and she said three, and he said, well, that's good we don't want it to be known? Is that the meeting where that happened?

Mr. EGGLESTON. Let me just make sure I'm clear about what I remember about it.

The CHAIRMAN. Why don't you go ahead and finish this answer. Time is up and we're going to continue on here, but complete the answer.

Mr. EGGLESTON. My recollection is that Mr. Ickes said, how many people at Treasury know about this. I thought she said four or five and I don't remember anything after that. I think I was leaving. This was over. Nothing—we were all standing, when this took place, by the door, and I walked out.

Senator D'AMATO. I think you gave a deposition where you indicated that you did hear the statement and that Mr. Ickes says, it's better that you forget that.

Mr. EGGLESTON. Well, you know, I don't think that I did say that in my deposition. I think I was asked what I understood by that, and I think I understood by that that he meant that should be closely held, and I apologize if I'm misremembering but I think I didn't say that I had heard, actually, the rest of the conversation. I'm just doing my best. If that's wrong, Senator D'Amato, I'm sorry.

The CHAIRMAN. We'll dig it out and check.

Senator Sarbanes.

Senator SARBANES. Thank you very much, Mr. Chairman.

Earlier, as I recall, I think a couple of you said that after the testimony of February 24th before the Committee, there was concern in the White House over two things: one, that Mr. Altman had not mentioned the recusal discussion that took place at the meeting of February 2nd; and second, that the earlier contacts had not been referenced. He said there was only that one contact. Then there was a third thing which you said didn't rise to the level of who called the meeting. Why did you think that Altman knew about the earlier contacts?

Mr. EGGLESTON. Senator, it was our view—we did not think—I did not think that he knew about the earlier contacts, but it seemed to me, and it seemed to others in these meetings, including, I think, Mr. Klein, that Mr. Altman was answering on behalf of the RTC. The question that Mr. Bond—that Senator Bond had posed to him was when the RTC informed the White House about the criminal referrals. It was our view that he was responding on behalf of his institution, that Ms. Hanson had been sitting at the hearing, and that he should at least—even if he did not know—that he should at least for the record make clear that there had been these earlier—because he was not—he was responding on behalf of his institution and if he had information—if his institution had information that was contrary to what he thought, he still should be providing it to the Committee. That was our—

Senator SARBANES. That information was transmitted by Ms. Hanson from the Treasury. Was Altman, in effect, very carefully making a distinction there?

Mr. EGGLESTON. I was not thinking about this issue that carefully. I knew she was sitting there. I think he was testifying in his role as head of the RTC, not in his role as Deputy Secretary of the Treasury.

Senator SARBANES. Mr. Sloan, you were at the—at least partially this meeting with Nussbaum and Hanson on September 29th?

Mr. SLOAN. Yes, sir.

Senator SARBANES. Did you think Hanson was—did you think that Altman knew the information that Hanson was bringing to you?

Mr. SLOAN. The only information that I can relate that bears on that on September 29th is that in the course of the fairly brief conversation, Ms. Hanson said that she thought that Roger Altman had sent Bernie some materials on this previously. That's the only reference to Roger Altman that I recall.

Senator SARBANES. Let me ask you. As you interacted with Ms. Hanson, and I'll extend the question to others at the table, did you perceive her as being Altman's agent or acting on her own?

Mr. SLOAN. My only knowledge is with respect to that reference because she made that reference.

Senator SARBANES. What's your perception of the Altman/Hanson arrangement or relationship, business relationship? Do you think Hanson would have come to the White House bringing you information about the criminal referrals if Altman hadn't authorized or tasked or instructed her, indicated to her, directed her to come over with that information?

Mr. SLOAN. Senator Sarbanes, I honestly am not in a position to give an informed judgment on that matter.

Senator SARBANES. When you all interacted with Hanson on matters, did you perceive her to be acting for Altman?

Mr. SLOAN. The only thing that I can tell you is that with that reference to Roger Altman in the meeting—I mean, I assumed there had been some prior discussion with Roger Altman, but the sole basis for that assumption was the comment that I related to you. And I should add that in a subsequent telephone conversation with me, she said that no, she had been mistaken, and she made

some reference to a March 1992 New York Times article, and so——

Senator SARBANES. That's the conversation where she told you she was mistaken in telling Nussbaum that materials had been sent over?

Mr. SLOAN. That's correct.

Senator SARBANES. And she then the next day called and it said it wasn't materials, it was a faxed article that was sent?

Mr. SLOAN. I don't remember her saying that exactly.

I remember her calling our attention to the article. I don't remember if she said it had been sent. I have a couple of lines in my notes of September 30th that relate to that discussion, but my independent recollection is that she was calling our attention to the article.

Senator SARBANES. That's the article that Altman faxed back in March 1992?

Mr. SLOAN. That's what I would now understand it to be. It's a March 1992 New York Times article about the Whitewater matter, is my understanding.

Senator SARBANES. It's an article of March 1992, but Altman faxed it over on March 1993?

Mr. SLOAN. That's a fact that I believe I've learned in the last several weeks—exactly when it was faxed—in the course of these investigations, but that's my understanding.

Senator SARBANES. Of the people at the table, Mr. Eggleston, you're the only one who was in the meeting of February 2nd in which the recusal was discussed. How long did that meeting last entirely?

Mr. EGGLESTON. Twenty minutes. I really have very little recollection of how long.

Senator SARBANES. How much of it was devoted to the recusal discussion?

Mr. EGGLESTON. I think it was about half and half, but, Senator Sarbanes, I'm really guessing.

Senator SARBANES. And were the principal discussants of the recusal Altman and Nussbaum?

Mr. EGGLESTON. Yes.

Senator SARBANES. Anyone else?

Mr. EGGLESTON. I don't specific—I'm not using that coily, I don't specifically remember anybody else.

The CHAIRMAN. Would you yield at that point, Senator Sarbanes, because that is a little different than what I think I heard earlier when one of you indicated that there were a number of concerns expressed by people in the room, so that it was not just an expression of concern from Nussbaum, but there were others there and that the phalanx of opinion was pretty much on the other side of that issue. Am I not remembering that correctly?

Mr. EGGLESTON. No, I think you're accurate. I cannot separate this conversation out by who the speakers were except I have a general recollection that Mr. Nussbaum and Mr. Altman were the two people who probably spoke most. I could not say, and I guess I have a general sense that others asked questions of Mr. Altman. I don't think I asked any questions, so I'm sorry.

I think I have amended my answer, Senator Sarbanes.

Senator SARBANES. When the meeting—what set the alarm bells off in the White House? Were you actually watching the hearing and listening to the testimony?

Mr. EGGLESTON. The alarm bells were set off by myself. I was in your hearing room in this building.

Senator SARBANES. You were here at the hearing?

Mr. EGGLESTON. I was here at the hearing.

Senator SARBANES. You sat there in the audience and thought to yourself, this is not the right testimony?

Mr. EGGLESTON. Yes, sir, after I heard the responses to the questions from Senator Gramm I had a cellular phone and I went out to the hall to call back to the White House.

Senator SARBANES. Mr. Chairman, I see my time is about up and I want to just take the remaining time to just engage Mr. Klein for a moment. I really have no question to put to him.

I do want to underscore that I think this issue about recusal generally is a very important question, and I think you've raised some considerations today that deserve very serious attention.

I mean, carried to its extreme, you could end up in a situation where the fact that you had been appointed to a position is in itself—people will then assert that's a sufficient basis that you should recuse yourself. Then you depart from that position and you say well, not only were you appointed, but you knew the President who appointed you, you had met him, and then you had met him three times, six times and so forth and so on.

It was instructive to be here today with Mr. Ludwig. I thought the point you made, the judges don't disqualify themselves in cases, even though the lawyers representing the litigants appear before them. They have a social relationship with the judge. They've known one another. They may, in fact, have gone to college together. They may have gone to law school together. And it seems to me it's a tough issue.

I recognize that, and I don't think there's an easy answer to it, but I think there is a danger in drifting down this road and particularly when it's used as the extracting price for getting a confirmation and suggesting that a person can't make an independent and objective judgment, even though they may have a personal acquaintanceship or a friendship with an appointing authority, so I think it's a matter that's worth a lot of very careful thought, and I appreciate your raising the issue here today, and, I thought, in a very forthright and perceptive way.

The CHAIRMAN. Thank you, Senator Sarbanes.

Let me announce a plan now, we've discussed it and I think we have an agreement on it, that what we will do is we'll finish with this panel tonight. We've got a fair amount of requests here for people who have additional questions. So we'll stay and we'll finish with this panel tonight. Once we are finished we will adjourn for the evening. We will start with the panel of Mr. McLarty and Ms. Williams that we were planning to do tonight at 9:00 tomorrow morning.

So we'll get an earlier start tomorrow with the understanding that we will go all day tomorrow and into the evening as late as we need to to finish up with the witnesses that we have on the schedule for tomorrow, including the two that we'll be carrying over

from our schedule for today. We will also target our efforts to be finished in terms of this entire effort by late in the afternoon on Friday and that will be our operating plan. Everybody can attempt to plan accordingly including the witnesses that will be appearing here tomorrow.

So with that, let me now yield to Senator D'Amato.

Senator D'AMATO. Thank you, Mr. Chairman.

Mr. Eggleston, you went to the meeting on February 24th, you were there and heard the testimony?

Mr. EGGLESTON. The hearing, yes, sir, I did.

Senator D'AMATO. And prior to that, as a matter of fact, the day before you had a conversation with Mrs. Hanson on the telephone and the gist of it was, was Mr. Altman prepared, was he prepared to answer the various questions as it related to the meeting that took place on the 2nd, and Mrs. Hanson then read to you the proposed answers including answers from the following meeting of February 3rd.

Mr. EGGLESTON. That's not my recollection. I don't know——

Senator D'AMATO. Well, did you have a conversation with Mrs. Hanson the day before February 23rd——

Mr. EGGLESTON. Yes, sir.

Senator D'AMATO [continuing]. As it related to Mrs. Hanson's testimony?

Mr. EGGLESTON. Yes, I did.

Senator D'AMATO. Excuse me, Mr. Altman's testimony?

Mr. EGGLESTON. Yes, I did.

Senator D'AMATO. And didn't she go into some of these things that he would be prepared to speak to, and read them to you?

Mr. EGGLESTON. Yes, what I was objecting to, you made a reference that she made to the meeting on February 3rd. She did not go into the meeting on February 3rd. I'm sorry, that's what I was contesting in what you said.

Senator D'AMATO. So she did say, as it related to the areas of discussion, that basically it would touch on the February 28th deadline, that the handling of civil claims—I'm trying to go through this in general. Finally, if the RTC were to determine any claims existed, the RTC would have to determine whether they seek a tolling agreement. Basically to outline the three procedures that we've talked to before.

And then we made clear we had no idea at all what decision would be reached. I did say, however, that if I received a clear recommendation—this is Mr. Altman's proposed testimony that's being prepared, she's going over it with you—from the RTC's Chief Legal Officer, I would follow it. I also said that I was reserving judgment on a recusal. This is what he was about to testify as it related to the meeting on the 2nd.

Mr. EGGLESTON. This is not my recollection of what Ms. Hanson—this is not my recollection of what Ms. Hanson said to me in our conversation on the 23rd.

Senator D'AMATO. What do you recall? Did you feel confident that she had covered all the aspects after you had gotten done with the phone conversation?

Mr. EGGLESTON. My recollection is that we had a fairly brief phone conversation and she covered in fairly summary form the

three basic topics, which is statute of limitations, procedure and recusal. Then she did it, kind of, for me in bullet form, I did not have the feeling that she was reading to me. And, Senator D'Amato, you were just giving much more detail than I remember her giving in that conversation.

Senator D'AMATO. But recusal was mentioned—what, if anything, did she say of the meeting on the 3rd?

Mr. EGGLESTON. She did not say anything.

Senator D'AMATO. OK. Let me ask you this: Is it customary for you to call witnesses in agencies who are going to be testifying before congressional committees?

Mr. EGGLESTON. It is not customary.

Senator D'AMATO. It's rather unusual?

Mr. EGGLESTON. It was fairly unusual.

Senator D'AMATO. Is this part of what you call a damage control team? Were you on that damage control unit?

Mr. EGGLESTON. I was working with Mr. Podesta on the hearing issue. I'd be happy to tell you why I called.

Senator D'AMATO. Well, it has been referred to. I think you and Mr. Podesta and I don't know who else is on this damage control as it is—that, I think, is Mr. Stephanopoulos' terminology.

Mr. EGGLESTON. It was never my terminology.

Senator D'AMATO. You've never heard that?

Mr. EGGLESTON. I—

Senator D'AMATO. But you call your team—it's a team, isn't it?

Mr. EGGLESTON. I don't know that we had a name for our team. At this time, Mr. Podesta was generally in charge of the hearing preparation and—

Senator D'AMATO. Why did you need to check with her?

Mr. EGGLESTON. Sir, I did not need to check with her.

Senator D'AMATO. But you did.

Mr. EGGLESTON. I wanted to make—I thought, sir—

Senator D'AMATO. This is before the testimony; right?

Mr. EGGLESTON. This is before the testimony. I was uncomfortable at the meeting that took place on February 2nd.

Senator D'AMATO. Why were you uncomfortable?

Mr. EGGLESTON. Because I thought that the meeting could get distorted and twisted and turned into something that it was not.

Senator D'AMATO. How is that? Did the issue of recusal and Mr. Nussbaum's being annoyed and others suggesting that he not recuse himself and finally Mr. Altman saying he'd sleep on it, did that ring a bell with you?

Mr. EGGLESTON. That was not the issue I was concerned about. I thought that there would be—

Senator D'AMATO. You weren't concerned about that?

Senator DODD. Al, let him finish.

Senator D'AMATO. You weren't concerned about that?

Mr. EGGLESTON. All I can do is tell you what I was concerned about.

Senator D'AMATO. I want to ask you a particular question. The method in which Mr. Altman was approached; Mr. Nussbaum, Maggie Williams, talking about the political implications; and if he recused himself, does everybody have to, et cetera, and you shouldn't have to do that. That's the gist of her comments. Mr.



Nussbaum, she's—Ms. Kulka's tough. You didn't see that that was putting any kind of pressure on someone who came in with a view towards saying I want to recuse myself.

Mr. EGGLESTON. I did not think he was under pressure. I was not a bit concerned about that. I was concerned that people would twist the mere fact that there had been a meeting between Mr. Altman and representatives of the White House staff in the White House. I thought that would get twisted. I was uncomfortable at the time. I thought it could get twisted and I wanted to make darn sure that he was completely prepared to testify about that meeting and testify about it completely. Let's take the hit. Let's get it all out at once, let's not mess around, and that was basically my view and that's the reason I made the call.

Senator D'AMATO. The next day you went to the hearing and—I'm trying to move through quickly because there's not much time and I'll come back anyway. I don't give up.

Mr. EGGLESTON. I didn't mean to be stalling.

Senator BOXER. We'll stay here all night.

Senator DODD. It's early yet. I went last night, it was about 1:00.

Senator D'AMATO. The next day you come here and you hear testimony. Did you feel that the testimony that Mr. Altman gave was incomplete?

Mr. EGGLESTON. I thought that he should have testified about the recusal portion of the discussion and I had heard the day before—I had ascertained the day before that he had intended to.

Senator D'AMATO. Good. Now, were you aware of the February 3rd meeting?

Mr. EGGLESTON. I was.

Senator D'AMATO. Well, when he was asked a question as to whether there were any other meetings and he said no, did that disturb you? Did that come to your attention?

Mr. EGGLESTON. Actually, I should sort of amend my answer. I attended the February 3rd meeting. I was not thinking of the February 3rd meeting as of the time of the testimony and my question the day before had really been about the February 2nd meeting. This February 3rd meeting was a 10-second event and did not disturb me.

Senator D'AMATO. The recusal aspects, that rang a bell; right?

Mr. EGGLESTON. The recusal aspects, the fact that he should testify totally to the February 2nd meeting was what rang a bell with me. Not the recusal necessarily more than the other part. I thought he should tell what happened at the meeting.

Senator D'AMATO. All right. Fine. Now, if you had known that Mr. Altman had called the White House, there is a little controversy here or difference in opinion about whether he had called either Maggie Williams or Ickes. He believes it was Ickes. And he called Ms. Williams for the purpose of having a meeting on the 3rd to announce, and obviously you weren't aware of that background, to announce that his decision that he—or he had firmly decided he was not going to recuse himself at that time, would that have disturbed you as being an incomplete answer that he gave to us? I'm saying if you were aware of that, let's—I'm saying you have to assume these are the facts. I do not say that you had knowledge of

them. But if you did and you know what he testified, would that have disturbed you?

Mr. EGGLESTON. I don't think that I at the time—I mean I don't think I can answer it, sir.

Senator D'AMATO. I'm not saying that you knew it. I'm asking you if you were aware of those facts and you had this meeting that he had called and said whether it was Bernie or whether it was Maggie Williams, I want to get together and let people know, would that have disturbed you that he did not recount this as a meeting and that he did not do it in subsequent letters being sent to the Committee to advise us as it related to contacts?

Mr. EGGLESTON. I thought that he should advise this Committee of all the contacts that he had, but I did, I know he got hammered on this yesterday, but I do think that he said "substantive" and I do——

Senator D'AMATO. Wait a minute. There was no mention of "substantive." I'm just asking for a response, yes or no.

Mr. EGGLESTON. Well, the way you phrased it, I can't answer that question, Senator D'Amato. I'm sorry.

Senator D'AMATO. That's OK. We'll return again, then, because I think it has some import as it relates to the value judgment that you make when I spell something out like that.

Mr. EGGLESTON. Senator D'Amato, I'd be happy to be here as long as you like to answer that question.

The CHAIRMAN. We'll come back to that. I think I've tried to be accommodating to every Member because at one time or another every Member has gone over and I'd like to be able to have the discretion to do that without—if it's obvious that we're running into a problem, I'm going to gavel somebody down. But I'd like to have some manner of civility here if we can. We are talking about a little bit of flexibility.

Senator Dodd.

Senator DODD. Thank you very much, Mr. Chairman.

Let me make an observation because I think while we're all now painfully familiar with all of the various names and dates and acronyms, I made a list during the process, RTC, OTS, FDIC, OGE, you can go on, and I presume that the casual observer of these proceedings might get lost rather quickly and wonder what was going on. That may be understandable, but Mr. Chairman, I think it's important as we look at the backdrop of all of this because the underlying and fundamental question, I think, is whether or not this White House and people in it or in the Treasury or the RTC did anything in any way to try and disrupt or interfere with the normal processes of the civil or criminal referrals from the RTC. Somebody else may word it differently, but I think that's the basic question.

I think it's worthwhile to note, because it's been said by most of my colleagues here this afternoon, that the witnesses before us are from the White House and much of what we know did not come about as a result of some investigative reporter or prosecutor or Independent Counsel pursuant to these discussions. The issue of the February 24th meeting, the testimony, the concerns raised, were raised within the White House. I think it's worthwhile to note that. That Mr. Klein and his candid conversation with Mr. Ludwig

about whether or not it was proper for him to have any discussion with the President occurred without someone leaning over him or watching what he was doing.

Your description, Mr. Klein, of how you interpret what you thought about that February 2nd meeting. I say this because as we try to make a judgment about this White House and the people in it and what they were trying to do, for those who are not intimately familiar with all of the details, all of the dates, all of the acronyms, all of the names, I think, in drawing a conclusion about it, your presence and your involvement is worthy of note and I just state that as an opening comment.

Second, with regard to the recusal and the February 24th hearing and although we went through this at great length yesterday I've just gone over the hearing record a bit and, again, I have complete respect for my colleagues, Senator D'Amato, Senator Bond and Senator Domenici, in what they felt they asked Mr. Altman at that meeting. I don't question for a single second what they thought they were asking and the answer they got back.

In fairness I think it's worthwhile and I'm going to ask you to comment on this, Mr. Eggleston, because as I went through the record, there were clear references to the statute of limitations, to the RTC, to the criminal referrals and so forth. At no point, at no point did any Member of this Committee, in my reading of the record, at any point ask specifically about recusals. Now they did ask specifically about a lot of other items. I'm not going to suggest that other meetings and so forth were not raised, but there was a lot of attention paid to the recusal issue. The word "recusal" does not appear, not in one single reference in that entire day of hearings, and I think that's worthwhile.

Mr. Eggleston, I ask you to comment whether that was—were you surprised at that?

Mr. EGGLESTON. I was surprised at that and I want to say that Mr. Altman did testify that he told us at the meeting about procedures and I would like to believe that if anybody said to him what do you mean, what procedures, and asked him to elaborate on that, he may well have gone ahead. My real concern about this was that like everything else in Washington, the fact that part of that meeting included a discussion of recusal was going to come out.

Senator DODD. You assumed someone would ask that question specifically?

Mr. EGGLESTON. If they didn't get it out of the February 24th hearing, I was going to read it in the Washington Post within a few weeks, and when that happened there would be a claim we covered the whole thing up. And I was concerned about the White House and the Treasury Department because I thought, as I said before, that it was important for us to get it out, take the hit or whatever, but I was not thinking at the time that Mr. Altman had somehow willfully withheld information.

Senator DODD. You stated already you were somewhat surprised in that hearing that Mr. Altman did not respond more directly to Senator D'Amato, Senator Bond or Senator Domenici's questions. You were just as surprised that the specific question of recusal did not come up?

Mr. EGGLESTON. That's absolutely right, Senator Dodd.

Senator DODD. Let me ask you something that's a little confusing to me. We watched a tape here yesterday that shows at the moment that Senator Bond or immediately thereafter asked this question about meetings, Mr. Altman on the tape turns to Ms. Hanson, and we've only had the opportunity to ask Mr. Altman what the question was. Roughly the question, as he recalls it, was are there any other meetings or there weren't any other meetings, were there and you see Ms. Hanson's head shake negatively. Can you shed any light on that particular moment? You were in the hearing room?

Mr. EGGLESTON. I was in the hearing room. I was not sitting with the RTC or Treasury people. I was sitting in the back, and you all had a better view of this transaction than I did.

Senator DODD. The second question is this: You're in the hearing room and you hear the series of questions raised by Senator D'Amato, Senator Bond and Senator Domenici about additional meetings or the subject matter of meetings, substantive meetings. The bells go off in your head, something's wrong here because the recusal has not been mentioned or these other meetings that have occurred, the September 29th, the October 14th meeting; is that correct?

Mr. EGGLESTON. Sir, let me make sure I'm clear on this; it's not 100 percent correct. What went off in my head was the failure to talk about the recusal issue with regard to the February 2nd meeting. A bell did not go off in my head about the fall meetings, even though I'd attended the October 14th meeting. That's a bell that went off in Mr. Sloan's head later in the day and I'm glad it did, but that didn't—

Senator DODD. We have a lot of discussions about what happened on Thursday, Friday, Saturday, Sunday, Monday, Tuesday, letters and so forth. As I understand your testimony, you then immediately go out in the hall with your cellular phone, high tech, and call the White House.

Mr. EGGLESTON. I did.

Senator DODD. We have got a problem here. Recusals weren't mentioned.

Mr. EGGLESTON. Right.

Senator DODD. Why didn't you at that particular moment, instead of going to call the White House, go up and slip a note to Ms. Hanson to send a note to Mr. Altman saying, you know, Mr. Secretary, I think we've got a problem here? Why the devil did we have to wait 4 or 5 days for that to occur and why didn't you, as a good lawyer, good Counsel, worried about this, so worried you go out to make a phone call, why didn't you, at that particular moment, say to Mr. Altman or inform him that somehow you felt there was a problem there?

Mr. EGGLESTON. Well, I will give you two answers, one somewhat technical and one less technical. One is that I was there monitoring this on behalf of the White House. Mr. Altman, as I think he's proven subsequently, as of that time, didn't have much idea who I was and I barely knew who Ms. Hanson was. I'd been at two meetings with her, but I hadn't had any other dealings with them. I wasn't representing them. I was there on a different purpose for

the White House, but that's not enough and let me give you the rest of the answer.

The rest of the answer is that I had tried the day before to make sure he was ready to testify about this and I was told basically that he was. If I had thought that he had neglected it, that—I mean it seemed to me that I had raised this issue, if I had not raised it the day before, I probably would have taken more steps at the time, but I'd raised the issue a day before and it seemed to me what I ought to do is call the White House. Today that may be the wrong judgment, it may be that I should have——

Senator DODD. The reason I say that is because all of us on this side of the bench have all either appeared in public places, made speeches, or given testimony. And from time to time we forget to say things and we rely on people then to remind us of something we intended to include. I'm not sitting here trying to become Mr. Altman's defense lawyer on this particular issue, but he's taken a hell of a lump because everybody says he should have said something and yet Ms. Hanson is sitting there and claims her bells were going off, your bells are going off. This guy sitting there, he tells us that he just didn't understand the question that way. I don't understand why people who care about this issue so much would basically not make more of an effort.

Now I don't mean interrupting his testimony, but he's there in the room, why wouldn't you do something to help the guy at that particular moment because this thing is going to blow up? As you are obviously worried about it, you go out and make a phone call to the White House about it, not an hour later, not a day later, but right during the hearing. Now this guy takes it on the head because someone didn't turn to him and say, hey, you got more to say here. In fact we worried about it yesterday. How do you answer that?

Mr. EGGLESTON. Well again, by the time of this hearing, I had taken steps to make sure he testified about this and then I had no more communication with him. Ms. Hanson is sitting right behind him. She's the person I had the communication with. I don't know if they made some decision. I don't know whether they've called Mr. D'Amato and Mr. Riegle, I don't know what's happened, but it didn't seem to me that given the amount of attention that I thought there probably was on this issue, that it was likely that he had simply forgotten about it.

Senator DODD. I just have a feeling, Mr. Chairman, and I know it's been good sport here for the last few days to have old Mr. Altman in the crosshairs, but it seems to me a lot of other people have some answering to do when they have an opportunity to step up.

Senator D'AMATO. Might I just——

Senator DODD. I'll be glad to yield, my time is up.

Senator D'AMATO. I think your observation is fair, but you see there's something that troubles me, and I don't mean to intrude, but we're trying to search out what happened and didn't happen. Why didn't the White House see to it that the letter correcting the record was sent?

Senator DODD. I don't disagree with that. I think that's another part of this.

Senator D'AMATO. You can understand, we're at a meeting.

Senator DODD. It gets worse. You have a tape of the thing, Al, you have a 4-hour tape and Mrs. Hanson is looking at a 4-hour tape and not doing anything.

Senator D'AMATO. They send all those corrective letters and they don't correct.

Senator DODD. I think that's a legitimate point you've raised. If someone who had an opportunity to help out at that particular moment—

Senator D'AMATO. I could almost understand that because you're embarrassed you don't know quite what to do so you want to at least talk to them, but I have trouble, difficulty thereafter, I think you raised it, why not when you sent the first letter and the second letter, correct it? That's—I just mention it and I thank you.

The CHAIRMAN. Let me add one thing in yielding to Senator Mack here and restoring his time. I don't know if you heard me say this yesterday because it happened at a point when some Members were out of the room, but after that hearing was over and Mr. Altman contacted me within hours, as he's indicated here, and also Senator Bond, I offered him the opportunity to come back to the Committee. I said that I would convene a Committee meeting specifically for the purpose of allowing him to correct the record and he pondered that for a while and decided not to do that.

Senator DODD. I appreciate that, but—

The CHAIRMAN. I just want to put it in.

Senator DODD. You read too much in that willingness to come back up and—I hear you.

The CHAIRMAN. I'm just telling you that it wasn't just a question of the offer to keep the record open. I offered the opportunity to convene the Committee in order to take and clarify or fill out those answers.

Senator Mack.

Senator MACK. Thank you, Mr. Chairman.

I want to provide, at least in my opinion, more evidence that Ms. Hanson should be believed and not Mr. Altman. And I think Senator Sarbanes actually raised this issue last night, but I want to raise it again because it has to do with Mr. Sloan. On September 29, 1993, Mr. Sloan, you witnessed Jean Hanson pull Bernie Nussbaum aside following a briefing on Waco.

Mr. SLOAN. That's correct, Senator.

Senator MACK. Could you tell us just a little bit about that? Let me tell you what I'm interested in. I'm interested in whether you overheard some of the conversation about referrals and some faxes.

Mr. SLOAN. I didn't overhear the conversation. I was called back in and Ms. Hanson then, it was my understanding, repeated some information to me and to Mr. Nussbaum and she did mention the referrals. Would you like me to go through it, Senator, or the comment about Roger Altman, if that's what you're particularly interested in? She said that she thought that Roger Altman had sent some materials to Bernie on this previously, or words to that effect. That's my recollection.

Senator MACK. Did Bernie recall receiving those?

Mr. SLOAN. No, he did not.

Senator MACK. I assume "Bernie" is Bernie Nussbaum.

Mr. SLOAN. Yes, sir.

Senator MACK. And there was some mention about the eight or nine referrals?

Mr. SLOAN. That's correct.

Senator MACK. You have also testified—oh, we covered that with respect to the faxes.

Well, if it's true, and I don't have any reason to doubt it, the issue then becomes how could Ms. Hanson have learned about the faxes if not from Mr. Altman? The point here is that there was a person receiving the communication that says he didn't remember receiving it (that is Mr. Nussbaum), therefore, really the only person who is left to tell Ms. Hanson about the communication is Mr. Altman. I think that is just more evidence that indicates that the people that we should rely on here in fact are Mr. Roelle and Ms. Hanson.

Now again in my—from my perspective that's a very important point. We all know that there is a conflict between Ms. Hanson, Mr. Roelle and Mr. Altman as to whether or not Mr. Altman told Ms. Hanson to talk to Bernie Nussbaum about the criminal referrals in the fall of 1993.

The only other point I think I want to make with the time that's remaining is with Ms. Nolan and, frankly, this is really probably more for my education than anything else. My interest was piqued a little bit earlier during the day on this issue about there being so many people who have given an opinion, from an ethical perspective, about the recusal. There's a nagging point, at least in my mind, and I'd like to get your input on it.

Would it be important for people who are making those decisions as to the ethics surrounding the decision to recuse, to know that Mr. Altman had already, at least as we have been told, been put under a fair amount of pressure? That is, Maggie Williams had told him, according to his diary on January 11th, that the First Lady, Hillary Clinton, was "paralyzed" about what was going on and that she didn't want someone "poking around into 20 years of public life in Arkansas"? My question here is, if someone is trying to rule on this issue, is there any significance to the fact that there had already been direct and personal pressure put on Mr. Altman to do one thing or the other?

Ms. NOLAN. Well, Senator, let me start by saying I don't, I don't know that there was pressure and I just, I want to—

Senator MACK. I'm not suggesting that you did, in fact, I think I was careful not to say that. What I'm saying to you is, given a situation where we now know that there was pressure, or I'm going to make the assumption that we now know that there was pressure, does that affect somebody's thinking with respect to making a decision about this recusal?

Ms. NOLAN. OK. Just so long as we're assuming hypothetical pressure. It seems to me what you're looking at is whether an official can make a fair decision. Once you're out of the territory where there are particular circumstances that would require the official to recuse or to consider the recusal issue and into an area in which you were asking a more general question, is there something that would disable the official from making a fair decision on the merits, yes, that's a critical decision. Any official who believes that he or she cannot make a fair decision on the merits shouldn't participate

in the matter, but whether in a hypothetical situation where there's pressure, whether that disables the official from making a fair decision, isn't necessarily so.

Senator MACK. As I said, I was—I was attempting for this to be educational to me and I'm not quite sure I understood that. Again, the bottom line is that we have heard many people who have been before us on these panels say, "You shouldn't be concerned about this, everybody has ruled ethically that on the recusal issue"—but I'm making the point that people didn't have all the information to make those decisions and wouldn't they be affected by having in front of them the page out of Mr. Altman's diary where he indicates that the First Lady says she's "paralyzed" by what's happening and that she just doesn't want the Counsel "poking into the 20 years of public life in Arkansas"? Therefore, to me the message pretty much is we got to keep old Roger Altman in place. Does that have any bearing on somebody's decision?

Ms. NOLAN. Senator, I'm sorry if I wasn't helpful.

Senator MACK. I would say it's not your fault. It's my fault, so let's try again.

Ms. NOLAN. I usually find it's not my student's fault when I'm teaching, so I won't blame it on you here, either.

What I was saying is that it seems to me the question that you're asking is whether the official is able to make a fair decision on the merits, and that question is one that you would usually have to look to the official to answer. That the official might be subject to some pressure in a particular situation is not enough. Pressure not to recuse might be different from pressure to decide a certain way. Even if an official is subjected to pressure to decide a certain way, that, by itself, doesn't require recusal. It would just depend on the circumstances that you're involved in the relationship, those kinds of things.

Senator MACK. Then what is your reaction, then, I mean let's put you back into this picture now. What would be your reaction if you had known this at the time that someone asked you about recusal?

Ms. NOLAN. Well, I would still look if I were giving the official advice on this matter, it would seem to me you would still have to ask: is that pressure to decide the case in a particular way, is that what you're being subjected to? And I'm—I don't think we have any answer to that question for now. I don't think—I guess I don't draw the conclusion that you do from it, Senator.

Senator MACK. Is there any responsibility on the part of the official that's under pressure to indicate all the relevant information so that everybody understands what the conditions are that that person is acting under?

Ms. NOLAN. Well, I think it suggests—I guess I still believe that it assumes a kind of improper pressure that I'm just saying I'm not sure you can assume and the assumption of an improper pressure then suggests yes, that should be on the record, so if you're not going to recuse, then at least everybody knows. When Government officials make decisions, they are subject to all sorts of recommendations for decisions, points of view, those kinds of things, that don't always go fully on the record in particular decisions. So I'm just not sure how to answer it in the hypothetical, I guess.

Senator MACK. I thank you for your effort.



Ms. NOLAN. Thank you, Senator.

The CHAIRMAN. Thank you, Senator Mack.

Senator Shelby, I think you're next.

Senator SHELBY. I'll be as quick as I can.

Mr. Eggleston, I want to go back to the diary just to clarify on one more thing and see if this makes sense of Mr. Steiner. I think I was reading in here, you'll recall in about the middle of the last paragraph here, once again they were very concerned about him, meaning Altman, turning the RTC to people they didn't know. Did I understand you to say—this is an excerpt, I believe, of the diary—to say turning the RTC over to people they didn't know, is that your interpretation?

Mr. EGGLESTON. That's the way I read it.

Senator SHELBY. That's the way you read it?

Mr. EGGLESTON. Yes. Turning the people on the RTC, I didn't think that made sense.

Senator SHELBY. That word was left out, but I think this is an excerpt of the diary.

Mr. EGGLESTON. I read Mr. Steiner's diary to have omitted the word "over," so "turning the RTC over to"—

Senator SHELBY. OK. Turning the reins of RTC over to people they didn't know.

Mr. EGGLESTON. That's the way I read the diary.

Senator SHELBY. OK. Now, let's talk about the morning again—and I know it's getting late and you all have been very patient. When Mr. Altman testified before this Banking Committee on that date, you were in the back of the room. You were observing what was going on. Mr. Altman, I don't know if you heard his testimony, he testified here that he had—a question I asked him—that he had about 12 hours preparation for this hearing. I don't know who prepared him or whether, you know, he had a team preparing him.

Mr. EGGLESTON. I think I did hear that, Senator.

Senator SHELBY. Twelve hours. Twelve hours is a lot of preparation. When he failed to give a full accounting, and I believe your phrase earlier was you wanted to help give, after the hearing, help give Mr. Altman—I think I wrote it down, help Altman give a full account, in other words, of what had transpired. Failure to give a full accounting of events, isn't it tantamount to withholding information, hiding information, of not telling all the facts or of evading a question or ducking the question as Mr. Steiner says, of not basically having enough respect? I don't know, these are my words and not yours, but I think it's very important.

The Washington Post today, as you read, had a story, omission, in other words, the failure to testify forthright and candid, fully, by Mr. Altman triggered White House damage control. Talking about the crisis mode and so forth. Well, you talked about it. We used different terms to describe it, but it was, it was a great concern to you and others at the White House. Otherwise, you wouldn't have made that phone call; is that right?

Mr. EGGLESTON. I think it was of concern to me and it was of concern to the people that I alerted at the White House.

Senator SHELBY. And you all realized there had not been a full accounting and you were going to try to help correct that; is that correct?

Mr. EGGLESTON. I realized at the time that he had not testified about recusal and then others recognized that there were other issues as well.

Senator SHELBY. I think someone used the term "disturbed" a few minutes ago. I don't know if you accepted the term as the mood of the White House, but wouldn't that be an understatement in describing the mood of the White House, that you were disturbed and others were disturbed about Mr. Altman's testimony before this very Banking—this very—this Banking Committee because he had not given a full accounting of things that just about everybody around the White House and Treasury knew regarding the various contacts, more than one, as he says, substantive contact? Wasn't that one of your concerns, maybe not the only one?

Mr. EGGLESTON. Well, I'm just—if you're asking me about "disturbed," I don't know that disturbed was the right word. A problem had been created that wasn't there before and we—and that was a source of concern. We had a problem. I don't know that we had time for an emotion of "disturbed." There was a problem that we thought had to be dealt with.

Senator SHELBY. You all deal in crises all the time. We do here and you do down there, of various kinds. It precipitated somewhat of a crisis, did it not, a problem?

Mr. EGGLESTON. A problem and it precipitated a number of discussions that culminated then on March 1st.

Senator SHELBY. That's all I have.

The CHAIRMAN. Thank you.

Senator BENNETT.

Senator BENNETT. Thank you, Mr. Chairman.

Mr. Eggleston, you testified earlier this evening that at the February 2nd meeting Mr. Altman was asked a series of questions relating to such issues as who was going to take over the Madison case and who these people were and so on; is that correct?

Mr. EGGLESTON. Yes. I don't remember much beyond the so on, but I remember those two.

Senator BENNETT. OK. Can you tell me how many people asked Mr. Altman questions?

Mr. EGGLESTON. Sir, I said a moment ago that I can't quite separate who the questioners were.

Senator BENNETT. I don't need to know their names, but was it more than one was it three or four or—

Mr. EGGLESTON. I think it was probably more than Mr. Nussbaum, but I can't really remember whether it was Mr. Ickes or Ms. Williams. I do not remember asking a question.

Senator BENNETT. And do you have any idea how many questions?

Mr. EGGLESTON. No. I'm sorry, sir, I just don't.

Senator BENNETT. OK. How many would you be surprised if it were fewer than?

Mr. EGGLESTON. That's a—let me parse that sentence out in my head.

Senator BENNETT. Was it—

Mr. EGGLESTON. Three, four questions. It was not an extended discussion of this issue.

Senator BENNETT. But there were several people and there were several questions.

Mr. EGGLESTON. I think so.

Senator BENNETT. OK.

Mr. EGGLESTON. I mean, I say I think so, but I'm really answering beyond the limit of my recollection.

Senator BENNETT. But there were more than one questioner?

Mr. EGGLESTON. I believe so.

Senator BENNETT. And therefore there would be, by definition, more than one question.

Mr. EGGLESTON. Questioner?

Senator BENNETT. Question.

Mr. EGGLESTON. Yes.

Senator BENNETT. OK. And it was on who was going to take over Madison and who these people are, tell us about it.

Mr. EGGLESTON. Yes, who would be the decisionmakers on the Madison matter.

Senator BENNETT. OK, fine. Thank you. Let me read to you—we've had all of this conversation about questions in response to Senator D'Amato and Senator Bond and Senator Domenici. It turns out if we look in the record that there was also a question asked by Senator Gramm. I can't imagine how he's forgotten it. Senator Gramm never forgets anything that I do and it upsets him. But anyway Senator Gramm has, as some of the members in this panel have, a single question that he asks every member of the panel. He says, "I have a simple question I would like to ask most of the members of the panel, let me read it. And the question is have you or any member of your staff—and it's Mr. Altman, I want to ask you first, have you or any member of your staff had any communication with the President, the First Lady, any of their representatives including their Legal Counsel or any member of the White House staff concerning Whitewater and savings and loan?" Mr. Altman answers, "I have had one substantive contact with the White House staff and I want to tell you about it." He goes on to tell us about it. It is the meeting and he describes the procedural circumstance, the RTC deadline, the tolling agreements, and so on. He goes into that in some detail and then he says this: "That was the whole conversation." Here's an opportunity for him to say and then we talked about recusal, but instead of doing that he says, "That was the whole conversation. I was asked one question. That question was whether we intended to provide the same briefing to attorneys for the parties at interest. I said I assume so. I went back. Jean Hanson checked with the RTC General Counsel. The answer was in due course. I said fine. That was it."

So from your recollection that there were other questions asked, there was a discussion about all of these things. It would seem to me that in a circumstance where Mr. Altman had a clear opportunity and went at great length to describe what happened at the meeting, had a clear opportunity to say and we also talked about recusal, he stopped short and said that was the whole conversation, but I was asked one question and he volunteered what that question was and he volunteered his answer, but he did not in any sense describe the questions that you who were present at the meeting said occurred.

Have I been unfair in my characterization from your point of view?

Mr. EGGLESTON. No. I mean, again, before I knew where you were headed, I think I indicated that my recollection of this is fairly dim, but I think there was a question or two at least asked of him on this issue.

Senator BENNETT. I'm not a lawyer, but I know enough not to let you know where I'm headed if I can possibly hide it.

Mr. EGGLESTON. I was actually guessing since I read the Gramm question in preparation for today.

Senator BENNETT. OK, very good, sir. Thank you very much. I appreciate your forthrightness and I'm sure having injected this into the circumstance, I'll probably live to regret it because it will probably be rehashed a number of times between now and the time we go home, but I did want to get it on the record.

I'll be happy to yield the balance of my time to Senator Mack.

Senator MACK. I have several questions that came to mind. Mr. Eggleston, you had said earlier—I'd like for you to repeat what you just said to Senator Dodd, that he didn't believe—that you didn't believe that Altman could have forgotten to mention recusal at the hearing.

Mr. EGGLESTON. What I said, sir, it was what I was thinking at the time. I don't mean to make a judgment about what he did or didn't forget.

Senator MACK. OK. Let me back up for a second. As I understand it, you had talked to Jean Hanson the day before and I think you made some reference or some comment on the fact that you really felt that the White House had an obligation to make sure that that recusal was disclosed.

Mr. EGGLESTON. Not an obligation. I thought it was in our interest to make sure, that it was in our political interest to make sure, that this get out on the record and take whatever hit had to get taken.

Senator MACK. And then that showed up on the talking points for Mr. Altman. He had them at the hearing and he did not state it and you said, at least I thought I heard you say, that you didn't believe he could have forgotten to mention recusal.

Mr. EGGLESTON. What I was describing was sort of the reason why I didn't at the time.

Senator MACK. Pardon?

Mr. EGGLESTON. What I was saying was, I was questioned by Senator Dodd, why I didn't jump up and announce that the record was false or something and just at the time as I was sitting there I was thinking I'd been over this issue. If an issue had come up that I remembered that I thought he just neglected, I think I would have been much more likely to hand a note. Since this issue had been raised, it seemed sort of odd for me to say how about the recusal issue. I'd just done that the day before. I don't mean to make a judgment today about whether he had or hadn't forgotten. I'm in no better position than this Committee to make a judgment about whether he had or hadn't.

Senator MACK. How many times have you been to hearings like the one that we're talking about?

Mr. EGGLESTON. Several.

Senator MACK. Is it normal for White House Counsel to show up at the hearings?

Mr. EGGLESTON. I go to several. I've been to confirmation hearings, I've been to several hearings, lots of hearings on the Hill. This was, as Senator D'Amato said earlier, this was a hearing about Madison, at least the Republicans, this was a hearing about Madison.

Senator MACK. And so that naturally was going to include you whether it had to do with leaks or anything else?

Mr. EGGLESTON. Yes, this was going to be a hearing about Madison, how the Government had handled it. We thought it was—well, I don't need to continue unless you—

The CHAIRMAN. Did anybody in particular assign you to come for that purpose? Did you come on your own or did somebody tell you to come?

Mr. EGGLESTON. I think Mr. Podesta asked me to come.

The CHAIRMAN. Very good.

Senator Sasser, I think you have one item and any remaining time perhaps you could yield to Senator Kerry.

Senator SASSER. I'd be happy to. Thank you.

The CHAIRMAN. Mr. Eggleston—

Mr. EGGLESTON. I'm sorry, Senator.

Senator SASSER. That's all right. We get advice from our staff back here and we're very understanding of that.

The CHAIRMAN. Was that a correction you need to make for the record, by the way?

Mr. EGGLESTON. It was not and I assure you I would have if it had been.

The CHAIRMAN. Just didn't want to let the moment pass.

Mr. EGGLESTON. Thank you. I've learned that as well.

Senator SASSER. Mr. Eggleston, you said a moment ago that you wanted—when you were contemplating correcting the record or—from Mr. Altman's testimony, you thought it might be in the political interest of the White House to correct the record. In other words, this was a political judgment in your mind?

Mr. EGGLESTON. I was primarily thinking about this as a political issue more—I thought about it in two ways. First, I thought to myself, as all lawyers do, I divided it up into categories. I thought to myself, is there a legal or ethical obligation to correct it? Has he given testimony that's false? I thought that if he had that we had a much higher level of obligation. And then I think Ms. Nolan sort of touched on this. And the second issue, if there is not an actual obligation, should we do it anyway, should we make sure it gets corrected anyway, even though it hasn't been in some fashion misleading? We moved to the second issue so quickly we didn't spend much time thinking about the first.

Senator SASSER. This whole controversy really involves political interest and political judgment and, in other words, the Office of Government Ethics has exonerated, as I understand it, the handling of this matter by the various officials that dealt with it, and Mr. Fiske has indicated there is no violation of criminal law. So what we're really talking about in this whole controversy is a matter of political interest or political judgment, isn't it, Mr. Eggleston?

Mr. EGGLESTON. That was certainly the way I was looking at it—including the fact of the February 2nd meeting and the issues that were discussed.

Senator SASSER. In fact, some objective observers say this whole controversy is politically driven, would even say these hearings are politically driven, and I'm not sure that I would disagree with that.

Now, as an example of what I'm talking about now, Mr. Klein, you were involved in producing a firewall memo regarding press inquiries related to the October 14 Treasury-White House staff meeting, were you not?

Mr. KLEIN. I don't think that's correct. I think you've mixed two things. I was sort of charged with this firewall memo after all this information came into press. This would have been, I think, on March 3rd.

Senator SASSER. So, OK. But the production of this firewall memo was really in an effort to minimize any political fallout, was it not?

Mr. KLEIN. Well, I think it was to minimize political fallout, but I think, as Mr. Cutler will amplify on this, there was, as I think he put it, a perception at the White House that there were too many people and too many meetings and Mr. McLarty asked that we put this memo out and that it be clear that everything go through Counsel's Office and we don't have too many people on too many meetings. So that's part of it, sir.

Senator SASSER. Let me have just one final question and then I want to yield my time to Senator Kerry.

Tell us about that memorandum and what the purpose of the firewall memorandum was.

Mr. KLEIN. Purpose was, I think, to reiterate in the clearest, sharpest, most definitive form we could that any contacts regarding Madison, Whitewater, anything related to that had to be channeled through the Counsel's Office and that one identifiable individual had to be known and responsible if those contacts were to go toward. They were to be documented, there were to be records made and so forth. That was the purpose.

Senator SASSER. And that's just good business practice anyway.

Mr. KLEIN. I think it's very good business practice, Senator Sasser, yes, sir.

Senator SASSER. All right.

Mr. Chairman, let me yield my time to Senator Kerry whose—

Senator KERRY. Mr. Chairman, I don't have any questions at this point. I would simply, quickly, I appreciate my colleague's courtesy in doing that and I will yield whatever time I have left over to another Senator, but I just want to, in sort of closing out today, one of the problems obviously with the time frame and just the lateness we went yesterday is we often sort of bypass something or forget it, but in following up on the questions of Senator Bennett about the testimony before us, and as I said earlier, there are two issues only that I see here, the political judgment issue, and it's questionable how much we ought to be dealing with that, and the second one is the question of credibility of the witnesses.

If you look—if you go back to that tape that we saw yesterday, not only did we see Mr. Altman turn back to Ms. Hanson, but we also saw Mr. Altman basically read an answer to us. This was not

an extemporaneous answer. It was a prepared answer and we have to judge what we received based on the fact that this was thought out, this was prepared and what was prepared, to have been said to the Committee. And we have here the talking points that he had in front of him and if you compare these talking points with the text of what he read, he read basically most of every paragraph, but interestingly he left out his own reference to recusal at that point in time.

Now we haven't—we didn't deal with that with Mr. Altman, but we should have dealt with it with Mr. Altman. And it certainly goes to sort of this whole issue of avoidance with respect to the recusal issue, not wanting it really to come up, and that is evidenced later on in other ways. But I just say that in paragraph 3 of his talking points it says, "I also said that I was reserving judgment on a recusal" and that is distinctly absent from the answer that he basically was looking right at this sheet when he delivered his answer to us.

I yield. I don't have any time so——

Senator DODD. Yield to me for just one point.

Senator BOXER. Yes.

Senator DODD. One quick point I wanted to make, Mr. Chairman, and I'll be very brief, I think it's again worth noting.

I mentioned earlier, Mr. Chairman, I thought the responses today from the personnel of the White House have been excellent. I think it's also worthwhile to conclude in the record, it may be that on July 26th, Lloyd Cutler testified before the House and just again, I think, just the paragraphs on page 8 in talking about this discussion regarding recusal, Mr. Cutler says:

However, Mr. Nussbaum's statements plainly suggest his preference that Mr. Altman not recuse himself in the circumstances and Mr. Altman may have so understood him. This may have influenced Mr. Altman's decision on February 3rd to defer recusal. Even though this does not, in my opinion, violate any ethical standard, there is a broader question as to whether it was appropriate for any White House staff member to make this preference known to Mr. Altman. The answer to that question seems clear when viewed in hindsight, clearer rather than it may have been at the time. I'm sure that everyone concerned acted in good faith, but in my judgment, this discussion shouldn't have taken place and once the question was raised I believe that in light of the facts from political circumstances relating to Madison Guaranty and Whitewater, the White House should have encouraged Mr. Altman to recuse.

I think that statement, the opening statement of Lloyd Cutler, is something that this Committee ought to take cognizance of in the consideration of these matters and in their own recognition of that particular problem.

The CHAIRMAN. We'll hear from him on Friday and he can elaborate on that.

On your side, is Mr. Roth next?

Senator D'AMATO. Yes.

The CHAIRMAN. Senator Roth.

Senator ROTH. Ms. Nolan, I'd like to go back to the February 22nd memorandum of Presidential Counsel Nussbaum.

Ms. NOLAN. Senator Roth, may I make a comment first just because I don't want there to be any confusion here. I'm not one of the people who drafted these memos. It is not something that usually falls in my jurisdiction. If I get questions about contacts, I usually refer them to other attorneys in the office. So while I have gen-

eral knowledge of the memorandum and I'm happy to answer questions about it, I don't—both to defend my own honor and to defend the honor of the White House Counsel's Office, I want you to understand that I am not the office expert on these memoranda.

Senator ROTH. Could you tell me who is the expert on the memoranda?

Ms. NOLAN. Well, Stephen Neuwirth is the Associate Counsel who drafted this memorandum with Mr. Nussbaum and he is still the Associate Counsel to whom I refer such questions.

Senator ROTH. Let me ask, are you at all familiar with the memorandum?

Ms. NOLAN. Yes, I'm generally familiar with them, but as I tried to say last time, when I get questions about them I would refer to the memoranda and research them and often—most often refer them to another lawyer.

Senator ROTH. But the purpose of such a memorandum is to act as a guideline, is it not, for White House staff?

Ms. NOLAN. That's correct, Senator.

Senator ROTH. So it is not intended to take a lawyer to construe or interpret it, but something to help, as I say, guide the White House staff in how to conduct themselves in contacts with agencies; isn't that correct?

Ms. NOLAN. That's correct, but what it does is set forth situations in which Counsel should be consulted and also, I think, suggests that where there are questions, Counsel should be consulted. So as to those questions, I think it does take a lawyer.

Senator ROTH. Let me ask you this, if I may. Subsection A-2 states that the ban on agency contact extends to components of departments and agencies with authority to investigate charges of misconduct. Is not the RTC such an agency?

Ms. NOLAN. Senator Roth, I'm sorry. I am just going to have to give the answer I gave last time, which is I haven't looked at the particular question at the RTC and I'm not in a position to give you an answer to a factual question that I don't have the facts for.

Mr. SLOAN. Senator Roth, I may be able to provide some assistance. I wrote the fourth in the series of memos. I'm not the principal—I wasn't involved in drafting the February 22nd memo, but if I could provide assistance, I'd be happy to do so.

Senator ROTH. Well, do you agree that the RTC is covered by this memorandum, that it is such an agency?

Mr. SLOAN. If you are talking about with respect to criminal referrals, I think that that part of the memo, as I recall it, would be the most pertinent.

Senator ROTH. But it does apply to criminal referrals; isn't that correct?

Mr. SLOAN. That would be, that would be my assumption that it would apply, yes, sir.

Senator ROTH. And is it correct, where the memorandum applies, that it requires all communication to the White House concerning pending investigations or cases to go through the White House Counsel's Office?

Mr. SLOAN. Yes, that's my understanding.

Senator ROTH. So, in summary, is it accurate to say that this memorandum generally prohibits White House staffers from con-



tacting adjudicative, investigative and enforcement agencies, including the RTC and the Treasury Department——

Mr. SLOAN. Well, I think that it——

Senator ROTH. Excuse me, let me finish my question—regarding specific pending civil and criminal matters?

Mr. SLOAN. There should be authorization from the Counsel's Office.

Senator ROTH. In other words, any such communications should go through the Office of the White House Counsel.

Mr. SLOAN. That's my understanding. When you say "go through," it could be with the authorization.

Senator ROTH. Or with the authorization of the White House Counsel.

Mr. SLOAN. That would be my understanding.

Senator ROTH. Let me ask you or Ms. Nolan, either one, on February 25, 1994, Mr. Stephanopoulos had a conversation with Mr. Steiner, the Treasury Chief of Staff, during which they discussed the RTC's hiring of Jay Stephens to handle the pending investigation of Madison Guaranty. And according to Mr. Steiner's deposition testimony, Mr. Stephanopoulos wanted to know how Mr. Stephens was hired and suggested that Mr. Stephens be disqualified from handling the matter. So here we have a White House official contacting a Treasury official regarding a pending civil investigation at the RTC and apparently trying to remove the attorney hired to conduct an investigation.

My question is, isn't the mere fact of this contact by Mr. Stephanopoulos a violation of the ethical standards outlined in the February 22nd memorandum?

Mr. SLOAN. Without accepting the characterization necessarily in the preface of the question, I think that it's most appropriate for somebody like Mr. Cutler to address that. I mean he has issued a report on this and I think he's made a general reference in the——

Senator ROTH. We will have our chance to ask Mr. Cutler on Friday, but we just agreed that this memo applies to investigations. Let me ask you again, isn't the mere fact of this contact a violation of the ethical standards outlined in the memorandum?

Mr. SLOAN. You are now asking me to render an opinion on this and this is a matter that Mr. Cutler has reviewed. I think he said as a general matter he thinks it would have been much better if contacts had been channeled more through the Counsel's Office, and I'm just reluctant to issue a judgment sitting here. I think that Mr. Cutler is in a far better position to do so and he has looked at it extensively. I haven't talked to the people involved or had the benefit of that.

Senator ROTH. Let me ask you this question: Similarly, later that same day, February 25th, both Mr. Stephanopoulos and White House Deputy Chief of Staff Harold Ickes spoke by phone with Roger Altman regarding the fact that the President was upset about the hiring of Jay Stephens. Isn't this another example of White House staff outside of the Counsel's Office contacting Treasury staff concerning a pending civil investigation? Whether the call has any effect on the handling of the case or not, wasn't the very placing of the call prohibited by the Nussbaum memorandum?

Mr. SLOAN. I would have to give the same answer. I think that Mr. Cutler is in a far better position to evaluate that, knowing all the facts and circumstances and the applicable standard.

Senator ROTH. Let me ask Ms. Nolan, do you have any opinion on this question?

Ms. NOLAN. Senator Roth, I agree with Mr. Sloan that when we're in the area of opining on particular behavior where we haven't done the review and gathered the facts, I wouldn't be in a position to give an answer.

Senator ROTH. Let me point out——

The CHAIRMAN. Senator Roth.

Senator ROTH. In section B-1 it says "any written or oral communication to the White House concerning pending Department of Justice investigations or criminal or civil cases must," and I'll emphasize the word, 'must', "be directed immediately to the Counsel to the President." Isn't it perfectly clear that in these circumstances before the contact is made, it must be cleared through the White House Counsel, isn't that the purpose of the memorandum?

Mr. SLOAN. The purpose of the memorandum was certainly to channel contacts through the Counsel's Office, but again, I'm not in a position to comment on the specifics of the questions that you suggest, Senator Roth.

Senator ROTH. My time is up.

The CHAIRMAN. Senator Roth, I think you're developing, if I may, very important points and I'm struck by how often it's impossible—I mean no disrespect to you, Ms. Nolan, because the same thing happened to the other ethics officer that we had here before. It's very hard to get a straight answer and it's obviously partly the nature of the problem, but it's sort of disconcerting, I must say.

Senator Boxer.

Senator BOXER. Mr. Chairman, thank you very much.

Mr. Eggleston, I'm going to ask you a couple of questions and I'll make a comment to Mr. Klein and then I will be done unless something outrageous happens and I will stay to make sure nothing does.

Mr. Steiner's diary has been held up kind of like the holy book of these hearings. The Chairman has referred to the diary, the Republicans constantly, Mr. Shelby. I find it very interesting since, particularly around the recusal issue, Mr. Steiner wasn't even in the meeting and his words are being held up as if they are the holy words. You were at that meeting. You said the issue of recusal was discussed for about 10 minutes; is that correct?

Mr. EGGLESTON. Yes, Senator.

Senator BOXER. If we're to believe this diary, that intense pressure—now think of those words, "intense pressure." We've always been under intense pressure. In 10 minutes, intense pressure was applied to Mr. Altman so I want to kind of recreate the intense pressure because it had to be done pretty quickly because it was only 10 minutes. You stated that no one at that meeting said these exact words or words very much like them to Mr. Altman. You must stay, Roger, at the RTC. You mustn't recuse yourself. You don't remember anyone saying that; is that correct?

Mr. EGGLESTON. I do not believe anyone said that to him at the meeting.

Senator BOXER. Did anyone say, my God, Roger if you don't stay here what's going to happen to us? This Presidency is going to fall apart. Stay, Roger.

Mr. EGGLESTON. I'm certain no one said that to him at the meeting.

Senator BOXER. That would be intense pressure.

You said there were questions, however, of concern about who would be in charge of the investigation and I would assume of the whole agency; is that correct?

Mr. EGGLESTON. Really, of this investigation. I think he was recusing only on this matter.

Senator BOXER. That's right. That's correct. Now, didn't Roger Altman state that no matter what his official recusal decision was, that basically he was allowing Ellen Kulka to be in charge of this particular investigation; is that correct?

Mr. EGGLESTON. Ellen Kulka and Jack Ryan. I thought I said both of them, and I remember that quite vividly.

Senator BOXER. At that point, Mr. Nussbaum said she's tough, she's not fair, words to that effect, and he was agitated about that possibility; is that correct?

Mr. EGGLESTON. Senator Boxer, I sort of hate to do this. I don't quite remember him saying that at the meeting. I remember other conversations with Mr. Nussbaum along those lines. I just don't quite remember that he said that at the meeting.

Senator BOXER. But we do know that you remember that Roger Altman said that he had faith in her; is that correct?

Mr. EGGLESTON. Yes. He said that she was an excellent career civil servant and an excellent employee, formerly of the OTS.

Senator BOXER. He said this during a period of intense pressure?

Mr. EGGLESTON. I believe he did, yes.

Senator BOXER. OK. So during the period of intense pressure—

Mr. EGGLESTON. And about Mr. Ryan as well.

Senator BOXER. During the period of intense pressure, what is Roger Altman doing? He's talking about Ellen Kulka and Jack Ryan and saying that they're decent people and hard-working and fair; is that correct?

Mr. EGGLESTON. That's correct. That's my recollection.

Senator BOXER. He didn't say Bernie, Bernie, I hear you, say no more. I'm going to rethink this thing. Bernie, I'm really upset about this. This was not the way he reacted. He was rather calm and stated that he had faith in Ellen Kulka?

Mr. EGGLESTON. Correct.

Senator BOXER. So I would like to say to you, Mr. Chairman, that this whole thing about intense pressure makes no sense at all. I know what intense pressure is. I've put it on a lot of people in my life myself. I'm pretty good at it. Just ask my kids. But I don't believe there was intense pressure here. I think we had a conversation of concern held by a couple of adults, and I think the decision that Mr. Altman made not to recuse himself happened not to be the right thing for him. Don't get me wrong on that—but I don't think there was intense pressure put on him because of what I know of Mr. Nussbaum. I don't know him personally, but I think if he had

put intense pressure on him, you would not have forgotten that; is that correct, Mr. Eggleston?

Mr. EGGLESTON. Yes. Mr. Nussbaum, as you will see, if you haven't seen already, is a very forceful person who can make himself clear when he wants to.

Senator BOXER. Mr. Eggleston, Ms. Hanson sat behind Mr. Altman during his entire testimony to this Committee; is that correct?

Mr. EGGLESTON. Yes.

Senator BOXER. You saw her there; is that correct?

Mr. EGGLESTON. I couldn't see her from where I was sitting. I saw her walk in.

Senator BOXER. I saw her on the tape. She listened to everything that man said. She never once tapped him on the shoulder, slipped him a note and when he turned to her to ask her a question, which he says to us was, "Did I leave anything out?" she shakes her head no. You sit at the meeting. You're concerned. Now, as I understand from picking up on your conversation with Senator Dodd, you don't go up to Mr. Altman because that's not really your job. You don't work for Mr. Altman; is that correct?

Mr. EGGLESTON. That's correct.

Senator BOXER. And Mr. Altman has Counsel; is that correct?

Mr. EGGLESTON. Actually, I want to say I think he had Counsel and maybe 10 other people from the RTC and Treasury, many of whom, I think, participated in his preparation, sitting behind him. I don't think he was alone even including Ms. Kulka.

Senator BOXER. So, Mr. Altman—thank you for that. That's very interesting information—has 11 people there from—

Mr. EGGLESTON. I'm sorry, I said 10 and I shouldn't. I'm sorry, I think there were other people there with him. I think I exaggerated.

Senator BOXER. Mr. Altman has several people. Would that be a correct statement?

Mr. EGGLESTON. I think there were other people who came in, yes.

Senator BOXER. Several people. Has several people, including the General Counsel, his Counsel sitting with him. Nobody taps him on the shoulder, and Mrs. Hanson states she was very upset, but she couldn't get the transcript of the Committee hearing, and therefore, doesn't change the testimony. I ask you a question. I know it's hard. Do you think Mr. Altman was well served by his Counsel? I ask you a yes or no. I ask your opinion under oath, do you think he was well served by his Counsel? I know it's hard.

Mr. EGGLESTON. That's really an unfair question. I'm sorry, Senator Boxer. I don't know the circumstances. I don't know their relationship.

Senator BOXER. I can appreciate your not answering that question. I will state that in my opinion I don't think he was well served by the people in his agency. Now, I will close here.

Mr. Klein, I want to compliment you. When you were faced with an issue where the President of the United States could have had a contact with Mr. Ludwig that you felt was improper, you didn't call a meeting. I'm so proud of you. You acted immediately. You didn't sit around and talk to a whole lot of people and everyone gets upset and talks about it for 3 days. You did what you had to

do and that situation was resolved. And I think there is a lesson here for everyone. Sometimes we meet and we talk and we yak and we don't do the right thing, and I think what you did was commendable. I want to compliment you for it.

Mr. KLEIN. Thank you. Senator Boxer, you asked a question before and I'm going to regret this and I think my wife will probably kill me for saying this, but you asked a question of Mr. Eggleston before and I think you asked it of both of us and I didn't have an opportunity and, frankly, it's been on my mind. You said, wouldn't it have been better and shouldn't we have some kind of rule that when the RTC made this referral that the information be communicated to Private Counsel for the President.

Senator BOXER. Yes, I did make that statement.

Mr. KLEIN. And I've been thinking about that a lot in these hearings, and if I am fortunate this will be the last time I ever get to testify before this Committee, and if you would allow me the indulgence, I think that that inference should not be one the Committee hangs on to. And let me tell you—and I think people of goodwill on both sides of the aisle ought to think about this—that we have only one President in this country. The people elect him. He represents all of us. He is not an ordinary citizen. He is our selection to represent this Nation. He can be blindsided by press inquiries, by people dogging him, by people trying to influence and corrupt him.

I believe that in a responsible Government, people who care about the institution of the Presidency should say that the President is legitimately entitled, indeed, should have all the information possibly available to him to represent and do his job. If he misuses that information, I think he should go to jail. But we have reached the point where we are so cynical and so disrespectful of institutions that we now assume misuse. And think of what we are saying: The President armed with this information is going to rig the Justice Department, the RTC, to destroy documents. All of that seems foolish. Now, to me, this is the tragic legacy of Watergate. I have waited 20 years to say it and I thank you for giving me the opportunity to do so.

Senator BOXER. I think you made your wife proud. Thank you, very much, Mr. Klein.

Senator SARBANES. If you would yield, that's a very important point. Mr. Cutler has written in today's paper, I thought, a very perceptive article on this very point, putting it in historical perspective and the fact the previous Presidents have had the fact that the inquiry or investigation was taking place brought to their attention in order not to be blindsided. Now, what they then do with the knowledge of that fact is very important.

If they simply receive the fact and in a sense, are placed on alert so they can deal with the kinds of inquiries and other things that will come at them, that's one thing. If they take that information and then seek to use it in order to improperly impact upon the investigation, that's another thing. That's what happened in Watergate, a very gross abuse of the instruments of Government in order to try to impact upon the investigation. But I think it's a very, very important distinction, and I think the point you're making is very important.

The CHAIRMAN. Senator D'Amato.

Senator D'AMATO. Thank you, Mr. Chairman.

Mr. Eggleston, you indicated in your testimony that you did not feel that Mr. Altman's testimony was misleading. Now, wasn't John Podesta told to tell Altman that his answer and I quote "could be misleading," and let me finish that—

Mr. EGGLESTON. Senator, I just wonder who you're quoting. Are you quoting me or Mr. Podesta?

Senator D'AMATO. Let me—these are notes, Mr. Podesta's notes, and these are Dee Dee Myers' notes. Let me read—that's why I wanted to finish this:

John, Neil, Cliff, et cetera met to review Roger's testimony and make sure we're accurate. John P. then talked to Roger, told them that he had misspoken, could be misleading.

Now, I'd suggest that that was Mr. Podesta's feeling, that you had worked on this afterwards. You were concerned and called him back. He then reached out to tell him. Are you now suggesting that wasn't the case, that you weren't concerned, that it could be misleading, that it was certainly incomplete, that certainly—as some of my colleagues have indicated—that here is someone who testifies, who has his notes and leaves out the issue of recusal as well?

Mr. EGGLESTON. I did not mean to leave that suggestion. It could be misleading or inaccurate. What I meant to say or what I intended to say was that we didn't make some conclusion about whether he had in some criminal capacity misled the Committee, withheld information, committed—I guess not perjury, because he wasn't under oath. That's really what I meant. We went beyond that issue because we thought we should encourage him to supplement his testimony in any event.

Senator D'AMATO. Let me, if I might, make an observation since we're now waxing poetic as it relates to politics, conduct of Government, et cetera. We become so institutionalized. Has the process of Government become such that we're worried about everything we do in terms of not whether it's right, whether it's wrong, whether it's complete, whether it's accurate but the political implications, the political spin doctors?

Here we have at least two members of the Counsel's staff working on this, the politics of Mr. Altman's testimony. I mean, your own words were—you went through the first thing as it related to whether or not it was truthful and accurate, whether or not there was any legal implications and moved quickly to the other one because you could see that there would be political damage possibly, et cetera, when that comes out later. The process has deteriorated to a point—

Senator KERRY. Would my colleague just yield for a minute. I don't want to penalize him for any time, but it seems to me there's a difficulty in setting up a standard of truth for people, asking them to live up to the standard of truth and forthrightness and then when they do, calling it bad politics and damage control. If we're going to have the standard of truth and people are living up to it, it seems to me we ought to encourage and applaud them for doing so and celebrate it when they do it, not denigrate it.

Senator D'AMATO. I have no problem with that and, indeed, I believe if Mr. Altman had been forthcoming with this Committee, we wouldn't have had at least 2 days of these hearings.

Senator KERRY. That's a different issue. I agree with my colleague. But that's different from suggesting—

Senator D'AMATO. I just thought I would touch on it. And I don't say anything when my colleagues touch on the areas that they feel strongly about because I think that's your—

Senator KERRY. I think it's important for the record. I'm not picking—

Senator D'AMATO. Again, that's just an observation. That's an aside that I would make.

Now, let me talk about this question of Mr. Altman and whether or not he had pressure on him. We've had testimony now and depositions that say—and diaries. And, my gosh, that diary is probably as correct and accurate as it relates a candid reflection of a young man who did care and who did want to do the right thing. Now we're ready to ridicule it. Let me tell you, you don't have to be in the President's Counsel's Office very long to know that Bernie Nussbaum gets excited. People said he was excited, and know that he said—you know, that she's tough.

The record indicates quite clearly, three or four people testify, in depositions—Mr. Altman himself—his state of mind when he left for that meeting. It was to indicate—and he told that to a number of people—that he was going to recuse himself. Five minutes or 10 minutes, and we know some people estimated 50 percent of the time was spent on this. They got him to go from an inclination to recuse himself to one where he said all right, I'll sleep on it, to one where the next day he went and said, I've changed my mind. You know, that's how this Senator sees it.

I think there's one other observation that I'd like to make: The difference as it relates to when you give President's Counsel information—and I think it's important and certainly a President should be given information as it relates to national security investigations, other kinds of things, things that may create embarrassment. He has a right to keep him away from certain situations that could be dangerous to himself, his family, et cetera. There's no doubt about that.

But if it's a criminal referral that touches on the President himself, that is different. Clearly, clearly. And, you know, there'll be a time, I guess when Mr. Cutler appears before us, when that point will be made, the propriety of that. And he may have a difference of opinion, but I think legal scholars will say that if it touches the person personally, he should not get this information. This Senator is not attempting to say that the White House through its Counsel—and that's why I make this observation—should not ever get information as it relates to criminal referrals. I'm not attempting to say that, and I wanted to make that distinction.

And last but not least, it seems to me that you did start out in the right direction, the White House Counsel, in terms of alerting Mr. Altman as to the testimony. I don't mean to put words in your mouth but that was not an accurate reflection of what you thought had taken place or had been told took place. It was not an accurate response. And you were concerned. And the fact is that you did

reach out, and I have no problem with that. But I do have a problem with the fact that after you advised him, he persisted in not making available to this Committee a complete and accurate response or correcting the record in any kind of timely manner. That I have a problem with. Maybe others don't. I think some colleagues do.

Second, and again, not to—

The CHAIRMAN. No, I didn't call time on Senator Boxer so I'm not going to call time on Senator D'Amato.

Senator MOSELEY-BRAUN. I was not suggesting time. I was just joking. He said—

Senator D'AMATO. Again, that is a disturbing feature. I believe that after being given a period of time to correct the record once and then still leaving it incomplete. And twice leaving it incomplete, and the third time and the fourth time. Only when the Grand Jury—understand this—only when the Grand Jury begins its process and lawyers are talking and people are saying, hey, listen, we better be careful here—I mean, now, that's when there's an attempt made to make known information that Mr. Altman was advised about, was advised thereafter. To try to hold Jean Hanson responsible. And, Counselor, I want to tell you at least I admire you for not going back after that. Let me tell you, I don't know whether she slipped him a note. I don't know what happened. At a hearing, you can have anybody—but to try to make her the fall person for his failure to correct his record in a timely manner at some point in time, that is really reaching. Should she have given him a note? Should she have talked to him? I don't know whether she did or didn't.

And I will tell you one last thing. Why did Roger Altman not tell us, in my mind, about the recusal? Because politically, he did not want to have the embarrassment and the give-and-take because we would have. I admit it. I admit it. I would have said to him, what are you talking about? You mean to tell me you discussed recusal? You went into that meeting and then you came out and you're not going to recuse yourself?

Would I have said that, you're darn right I would have. I admit it. I think that's a legitimate inquiry that we would have to make because I still think it's a factor.

You may say, well, technically he doesn't have to. I call his methodology of ducking that, not wanting to raise that issue. I can understand it. But he did. He deliberately and consciously ducked it. And if he didn't deliberately and consciously duck it, notwithstanding he was prepared that night, he certainly did thereafter, after people brought it to his attention.

I thank my colleagues for extending this opportunity to at least make what I consider to be my wrap-up and I yield.

The CHAIRMAN. Senator Moseley-Braun had signaled she wanted to be recognized next and I think I should go to her next.

Senator MOSELEY-BRAUN. Thank you, Mr. Chairman.

And I will be brief and to the point. I'd like to, in my wrap-up, to start with Mr. Cutler's testimony before the House and when he said with regard to the issues we've been discussing today, and I want to quote:



As you know, the Office of Government Ethics had concurred with the determination of the Treasury and RTC ethics officials in February 1994, that Mr. Altman had no legal obligation to recuse himself from Madison Guaranty/Whitewater matters and that a decision on whether or not to recuse lay within his personal discretion.

The Office of Government Ethics has now also informally confirmed that it has no reason to believe that any White House official violated any ethical standard with respect to the recusal issue.

Mr. Cutler goes on to say, and I frankly absolutely agree, that:

It is clear, however, that Mr. Altman probably should have recused himself, even though there was no legal requirement that he do so. The fact that he didn't do so, however, is not the fault of anybody on this panel. Nor was this panel responsible for the failure to disclose the recusal discussion during the February 24th hearing.

This panel had recommended disclosure before the fact, as well as after the fact. And in so doing, these lawyers, comported themselves in keeping with the ethical guidelines of White House Counsel, and in keeping with the ethical standards for their profession.

And I'd just again—again, I'm not prepared to make editorial comment about any of this except to say that that is my conclusion from having listened to their forthright conversation today and, Mr. Chairman, I think in the interest of humanity to halt—

The CHAIRMAN. Senator Dodd is next this evening—

Senator DODD. In the little bit of time you have left, I'd just like to make a couple of points.

Senator MOSELEY-BRAUN. In the interest of humanity I will yield the remainder of my time to Senator Dodd and thank you very much.

Senator DODD. Thank you very much. Just a couple points.

First of all, I thought as well that Mr. Cutler's article this morning in The Washington Post was extremely worthwhile. The Chairman may recall yesterday or the day before that I raised the issue of the Civiletti/Carter matter and included in the record the Committee report which I thought was an important point to make about the issue when Government officials should be in touch—even a family member in that case was involved. Senator Matthias and Senator Dole played a very critical role in writing that report and making that conclusion, I might add.

Second, Mr. Chairman, I don't want to dwell on this particular point and it doesn't necessarily obviate Mr. Altman's responsibilities from the Committee. As I've said earlier, in fact, my colleague from Utah has quoted me on it, as far as I'm concerned on March 3rd and thereafter, it's inexcusable, these letters. That to me is wandering around on that issue, so you'll have no argument from this Senator on that point. But I do think it's worthwhile to note that the hearing on February 24th—I was not present at that hearing, but 14 Members of this Committee were. Seven Members of the Democratic Party and seven Members of the Republican party were present for that hearing, on and off, not necessarily for all of it.

I would just point out in the record that not a single Member of this Committee specifically raised the issue of recusal. Now, you may believe and I can understand—I don't argue—what the intent of our colleagues was who raised questions about meetings, but at no point, at no point does the word "recusal" appear, not once, with 14 Senators present questioning the witnesses, including Mr. Altman.

Now, the issue here is legitimate enough—in fact, I’m told, and our colleague from New York mentioned that the night before the meeting, he called Mr. D’Amato, our colleague, and our colleague said to him very bluntly and very clearly, I’m going to raise the issue of recusal with you. I’m sure my colleague will correct me if I’m wrong in recollection of that conversation—and yet at no point on the following day does a single Member of the Senate on this Committee specifically raise that issue.

Now, people can interpret any way they want, but 14 U.S. Senators sitting in a panel with witnesses in front of them, had an opportunity to specifically raise that question. The question of the statute of limitations was raised. Criminal referrals were raised. The RTC was raised, specifically. But at no point specifically, was the issue of recusal raised.

Last, I want to know who these 10 or 11 people were in that room that day.

Mr. EGGLESTON. I’m sorry, sir, I was exaggerating because I was bristling at your suggestion that I had behaved improperly at the hearing. I think he had other people with him and I don’t know how many there were.

Senator DODD. Well, do you know whether or not they knew what you knew when he answered the question that you thought Mr. Altman had not answered properly? Were there other people there—aside from you and Ms. Hanson, who has testified that she thought that he had made a mistake as well? Was there anyone else who had the same reaction you did? Do you know that?

Mr. EGGLESTON. I don’t know. I have since learned that there was—I think I’ve learned there was a point in his briefing book on the issue. They spent a lot of time briefing him. I’m sorry, Senator. I think I should retract what I said. I don’t know. I was still bristling at your comments.

Senator DODD. I’m not talking about pinning this on you particularly, but as I said earlier, this is not necessarily going to change anyone’s mind on the question, but when you’ve got people in a room who claim that they know something else has happened, there is the opportunity to correct it. All of us on this side of the table, I think at one point or another, have been in a situation where we’ve been reminded of something we wanted to say or should have said and I’m trying to be sensitive to that particular question. It doesn’t excuse Mr. Altman from not responding from those who think he should have.

But simultaneously, when there are people there who are working on these issues, my suggestion is that it’s certainly not beyond the realm of concern that someone else doesn’t also say, you better mention this. If that had happened, and maybe Mr. Altman has said, I’m sorry, I’m not going to say anything about that, that would have been another fact situation, but it’s not inconceivable that someone who knew at that juncture that he missed a statement or not included or not been responsive to Senator D’Amato, Senator Bond, and Senator Domenici, that we wouldn’t be talking about this today. I think that’s worthy of note.

I yield back the balance of time.

The CHAIRMAN. Senator Bennett.

Senator BENNETT. Mr. Chairman, I'd love to get philosophical on all these issues, but I'd rather go to sleep so I will forego.

[Laughter.]

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I do think I ought to make this observation in light of the comments of my good friend Senator Dodd. The one problem with sort of saying, well, no Committee Member asked about the recusal was that Altman outlined what took place at the meeting and then said that was the whole conversation. Now, I didn't follow this closely at the hearing. I was there, but if I heard that, I would not, then, think that it was required upon me to explore whether other matters had come up since he had cited matters prior to saying that which had to do with the statute of limitations issue and then said that was the whole conversation, so I'd just—I'm not sure—he was asked what happened at the meeting. Recusal took place at the meeting. We were not told that. And furthermore, in the course of expounding what did take place, he then went on and said that was the whole conversation. So it seemed to me——

I want to ask, though, these able attorneys that are before us, and obviously one of the things we have to do out of all this is make some recommendations as to changes that could be made, statutes or procedures that could be put in place that would improve matters, what observations do you have on that score, if any? What could be done differently or should have been done differently or what different arrangements ought to be made? Do you have any observations on that issue?

Mr. KLEIN. Senator, I think it is late. If you'd like, we would be glad to submit something or—I——

Senator SARBANES. Let me ask you a couple of questions just as you're sitting here. Do you think that the Altman wearing two hats was a source of a problem here?

Mr. KLEIN. I think it could well have been, sir.

Senator SARBANES. So one thing we ought to do is find some way to preclude that from happening so you don't have an overlap where someone is the Acting Head of the RTC and also the Deputy Secretary of the Treasury?

Mr. KLEIN. Again, this is off the top of my head. I haven't given this a lot of thought, Senator, but that overlap or function seems to me to cause confusion.

Senator SARBANES. Mr. Klein, do you think in view of what's happening on this recusal issue that we need to give some very hard thought to the recusal question?

Mr. KLEIN. I wish you would because I agree with Senator D'Amato that not everything in life is politics and recusal is not a political matter. It ought to be a matter of principle and I think to the extent the Senate or anybody else can give some thoughtful, caring guidance on that, I think that would be helpful, sir.

Senator SARBANES. What is the basis of recusal if it's been found that it's not legally required and not ethically required?

Mr. KLEIN. There is this one bottom line, it seems to me, which is an individual subjective determination, can I—in adjudicating or listening to this matter, do I think I can be fair and impartial? Different people, I think, could answer the same question differently.

That is entirely subjective. The rest, I think, is objective and there are principles that people apply in this respect. But I do think that at the core, each individual has to look at himself or herself and say, can I fairly adjudicate it? If I cannot, if I'm in doubt about that, I'm out.

Senator SARBANES. What do you do if someone bails out of every difficult situation by recusing themselves?

Mr. KLEIN. Then I think that person should not be appointed.

Senator SARBANES. Mr. Chairman, I'd like to include in the record the article by Mr. Cutler that was in the morning paper. Have you already done that? Apparently it's already—it has already been included. I have no further questions.

The CHAIRMAN. Thank you, Senator Sarbanes. I didn't take a second round here and I don't think I'm going to take a full second round now, but I do want to make a couple of observations before we finish here tonight.

I've not made any final judgments here, nor will I about anybody's conduct until we've had a chance to hear all the evidence, and try to iron out all the contradictions. There are a number of them. I've been listening very carefully to what everybody has been saying, including this panel here today.

But I do have a view on one point that was raised earlier by Senator Boxer, and I respect her view, I just happen to have a different view. I don't want to get into a debate on it. I just want to put my view on the record. Mr. Altman, when he was here testifying last night—and he had been here a long time, he was quite tired, and it was an ordeal for him and I suppose for everybody and he indicated—I asked him very carefully the question of when he had reached the decision to recuse himself in this case. He told this Committee under oath that sometime in the 24 hours before he came to this fateful meeting at the White House that he had reached the decision to recuse himself, and at that meeting at the White House he announced his intention to do that.

You also said earlier, Mr. Eggleston, in the beginning of your testimony today, that meeting that took place, about half of it was your estimate was given to recusal. In any event, as to whether or not there was intense pressure—this was the phrase coming out of Mr. Steiner's diary—the test I'm applying there in my mind is what happened. You have a situation where Mr. Altman, according to his testimony, not only came with the intention of recusing himself and gave that indication in the meeting, if what he said yesterday is accurate, but it was met by a response in the room which you described early in your testimony today, I thought, much more fully than—I think as it got repeated the 10th time, it lost some of its bite, some of its edge.

We don't have the transcript here. If I did, I would read it back because I was quite taken with the way you described it the first time. But in that meeting, he has moved off his intention to do this recusal, and he decides that he's going to sleep on it overnight. By the time another 24 hours passes, instead of going this way on recusal, he's going this way on recusal. He goes to see the Secretary of the Treasury, who's his boss, within 24 hours of that meeting to say that he's decided now not to recuse himself.

Now, if that kind of a transformation isn't the result of a pretty effective application of some kind of pressure, I'm not sure what it is that happened. Pressure doesn't mean somebody yelling and screaming. Pressure can be the stated point of view by one, two, three, four people that make it very clear exactly what the collective view is in the room and on the other side of this issue. But the practical fact is that Mr. Altman, by his own testimony, went into that meeting going this way on recusal, and he ran into something in that meeting that caused him to decide that he better suspend that view. And within 24 hours he changed his view, as he testified to us yesterday, and he's going in exactly the opposite direction.

Now, to me, that's significant, and it relates importantly to something that was cited by Senator Sarbanes, I think, from this statement from Mr. Cutler. In Mr. Cutler's—perhaps it's an op/ed piece today——

Senator SARBANES. I was sort of abridging his op/ed piece.

The CHAIRMAN. There's a bottom line in that. Maybe you read it, maybe Senator Kerry read it. The bottom line as I remember it having been read a moment ago, and maybe you can help me find it in his statement, is that after all is said and done, whatever took place in that meeting as an expression of White House opinion or difference of opinion on recusal should not have happened. It should not have happened.

Now, my understanding is that's Mr. Cutler's conclusion. Let me just find the line. It is on page 8 of Mr. Cutler's statement to the House:

However, Mr. Nussbaum's statement plainly suggested his preference that Mr. Altman not recuse himself in the circumstances, and Mr. Altman may have so understood him. This may have influenced Mr. Altman's decision on February 3rd to defer recusal. Even though this did not, in my opinion, violate any ethical standard, there is a broader question as to whether it was appropriate for any White House staff member to make this preference known to Mr. Altman. The answer to that question comes clear,

says Mr. Cutler, who has reviewed all this, who's the present Counsel,

when viewed in hindsight, that it may have appeared to be at the time. I am sure that everyone acted in good faith. But in my judgment, this discussion should not have taken place.

Of course it shouldn't have taken place, and to me, whether you accept the precise words in Josh Steiner's diary or not of intense pressure, something happened in that meeting that caused Mr. Altman, who went in going this way to come out in a position where he was turning himself around and within 24 hours he was going the other way. I think there was a cause-and-effect relationship here and it should not have happened.

Now, that's just my view and at this hour, I'm not particularly interested in debating it with anybody because others can state their views, although I'm quite prepared to do that if necessary. I want that view on the record in terms of my reading of this situation. I want to say one other thing, if I can be permitted to do so. That is this: Things have changed in this country in many, many ways. I think Senator Dodd has probably expressed that as pointedly—and Senator Kerry and Senator Sarbanes and others over the

last two or three days—in terms of how is it that we're into situations which drive us into hearings like this and oftentimes how you can try and disprove a negative or some assertion that it may not have any direct grounding in fact.

I'm struck by the fact that if you think about even the White House today, anybody's White House, the Republican White House, the Democratic White House, the fact that we've got well paid lawyers, some of the smartest people around in the legal profession who are there to try to keep track of the political implications, which is a euphemism for press issues. What's the press going to say? How is it going to be read? How do we handle it and so forth? The press lives right in the White House. You go down to the White House, part of the building is devoted to the press.

That's part of our open system of Government. But we're in a situation right now where the concentration on these political elements has become so advanced in part because you're under siege all the time and certainly this President has been, and I think much of it terribly unfair, but you've got a situation where you've got a Counsel like you, Mr. Eggleston, here with a mobile phone to monitor the testimony to try to understand what the political implications might be, so that if a mistake occurs, as it did in that hearing, you can get out the door at the first opportunity, use the mobile phone, call Mr. Podesta, who's there to try to figure out how we cope with this dynamic that is now American politics in 1994.

I don't know how we change this situation that we all find ourselves in, but I'm not sure anybody likes it or feels very good about it. I hope the next person that's in Mr. Altman's situation, who I think is a decent man, a person who's come into public service more than once, is put into a situation where he's got at least two responsibilities that he's trying to cope with simultaneously, wearing the RTC hat and the Treasury Undersecretary hat, that if he's trying to reach a decision on recusal and he reaches a decision on recusal and he comes to a White House meeting or anybody else that's in that situation in the future—first of all, I hope he wouldn't have to come to the White House for that meeting.

Second of all, if he does, I hope his view will be respected and that there won't be some kind of a move put there to try to dissuade him and move him in another direction, which, in my view, in this instance clearly happened. It's regrettable and I think he's, in fact, one of the victims of it.

Senator DODD. Mr. Chairman, I point out, in fairness, I think Mr. Altman also agrees with you, and I think he stated in his testimony he regrets it and if he had to do it over—

The CHAIRMAN. That's exactly right and it's an important point. I thank my colleagues for their indulgence. I'd like to adjourn if we may.

Senator SARBANES. Could I ask about tomorrow's schedule?

The CHAIRMAN. Yes. We've agreed—

Senator SARBANES. It's my understanding we will meet at 9:00 to hear from Mr. McLarty and Margaret Williams. Is that correct?

The CHAIRMAN. Yes, and we'll proceed with that panel through the day into whatever hour late tomorrow it may be.

Senator SARBANES. When we complete them, we'll take the four people from the White House panel. Is that correct?

The CHAIRMAN. Yes.

Senator SARBANES. And when we complete them, we'll go to Mr. Nussbaum.

The CHAIRMAN. Yes, that's correct.

Senator SARBANES. So it will be three panels?

The CHAIRMAN. Last witness tomorrow.

Senator KERRY. And we intend to finish all of them tomorrow?

The CHAIRMAN. Yes, it's our intention to finish them tomorrow, including going late into the evening.

Senator SARBANES. On Friday we'll do——

The CHAIRMAN. On Friday, our understanding is that we will finish by the——

Senator D'AMATO. We want to try to finish Friday at a reasonable hour so Members can meet their other responsibilities and I say to my Chairman and to my colleagues, what we're going to attempt, I know on our side, is to move through the panels tomorrow as quickly as we possibly can so we can get out.

Senator SARBANES. Mr. Chairman, I want to say just as we look ahead, I think that you and Senator D'Amato have scheduled, first of all, an exhaustive series of witnesses. I think we will have heard from everyone significantly relevant to this matter, and I also think they have been organized in a very logical and sensible sequence in terms of laying out the story here. I think we've worked through it in an orderly way and I think as we move towards concluding it with Mr. Cutler on Friday, I do want to commend you and Senator D'Amato for having put together this hearing schedule.

The CHAIRMAN. Thank you very much. Senator Bennett.

Senator BENNETT. Mr. Chairman, just one sentence. Your statement was worth staying awake for. Thank you.

The CHAIRMAN. Thank you. The Committee stands in recess until 9:00 tomorrow morning.

[Whereupon, at 9:40 p.m., the hearing was adjourned, to reconvene at 9:00 a.m., on Thursday, August 4, 1994.]

[Prepared statements, response to written questions, and additional material supplied for the record follow:]

## ADDITIONAL PREPARED STATEMENTS

### TESTIMONY OF TREASURY SECRETARY LLOYD BENTSEN, SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. Chairman, Members of the Committee:

There are a number of points I would like to cover this morning. For organization's sake, I want to present my testimony in four parts. First, I want to describe my relationship to the oversight of the Resolution Trust Corporation and how my office operates. I want next to address my recollection of events. I'd like also to discuss the steps I have taken over the past months. And, finally, I want to cover the conclusions which have been reached and the actions I will take.

Knowing that the responsibilities of a Cabinet office are different from those of a congressional office, I put two systems in place when I came to Treasury to help me make the transition.

First, as it regards the RTC, I serve as Chairman of the Oversight Board. By law, I am prohibited from involving myself in any day-to-day matters. I can discuss policy in broad terms, but I cannot intervene in any case-specific matters.

I asked my Legislative Director, Mike Levy, to make it clear if Members or staff inquired about specific cases, that they should be directed to the RTC, not to me.

Second, I have organized my office such that all the paperwork on matters of policy and Treasury's varied operations flows through my Executive Secretary, Ed Knight. Ed's the gatekeeper. It's his job to make certain that what crosses my desk, as it regards the RTC—or any issue, for that matter—contains only those materials which I should be seeing, and nothing else.

We have a thick manual at the Department about how information flows to my office. I insist on written briefings. It makes the best use of my time. It's the best way I've found to absorb information. When I'm asked for a decision, I expect a memo that gives me the background, lays out the options, and tells me what the staff recommends. That way, I can either make the decision, or let my staff know I want more information or want a meeting on the issue. That's how I deal with substantive issues, not in some bull session.

In short, I have a very organized office procedure. I have run my offices like that for years—in business, in the Senate, and at the Treasury Department.

Mr. Chairman, if someone on my staff wanted to communicate with me in a meaningful way, this is how they would have done it. Through my in-box, with a memo, with a meeting on which I was briefed, in writing. That's not to say I don't have occasional impromptu visits from, or conversations with, my staff. That often happens if there's a developing crisis that must be dealt with. But for matters of any import, I prefer paper.

I asked my staff to go back and look at my office records to see what I was involved in over the period in which the Committee is interested. From September 23, 1993 until March 21, 1994, I had nearly 800 meetings on 560 topics. I attended 130 meetings at the White House, met with 51 Members of Congress, and testified on the Hill 11 times. I received more than 500 written briefings to prepare for my meetings. I delivered 60 speeches, gave 80 interviews, and had 25 press conferences. I received over 2,400 memos. And during that period I traveled to seven countries and nine States.

This entire issue revolves around meetings that I understand were on the issue of handling press inquiries about the Madison Guaranty referral, or on the procedures the RTC would follow in pursuing civil claims. There are differing recollections, but they are about actions that two independent investigations tell us broke no criminal law and violated no ethical standard.

I have turned the Treasury Department upside down. I've turned my memory inside out. We went through thousands and thousands of documents and can't find one written briefing to me on these White House meetings. It wasn't until March 3 that I learned the extent of these meetings. I issued a statement about the meetings and said that I had not attended them and did not know about them.

I may be walled-off from most RTC matters, but I am responsible for what happens at the Treasury Department, and I accept that responsibility. That's why I also



immediately asked the Office of Government Ethics to examine these contacts. They're a nonpartisan agency. They're the experts.

In preparing for this hearing, I agreed to the Committee request to avoid looking at materials regarding the case until I gave my deposition to the Committee staff. I agreed to that request, although it frustrated me because I wanted to wade into this and find out all I could. I had to wait over four months to start looking at these papers.

After I gave my deposition last week, I sat down and began to read through the material. I saw nothing that changes my recollection.

Let me lay out for you what my basic recollection is about these matters.

First, I read in the press, sometime in October, about criminal referrals and Madison Guaranty. Second, on February 1, 1994, Roger Altman and Jean Hanson came to my office. Roger told me he was thinking of recusing himself, and the other subject that came up was the legislation on extending the statute of limitations. Later that month, Roger told me he had decided not to recuse himself.

On February 23rd, I met with Roger and Jean Hanson briefly, in advance of the RTC oversight hearing the 24th. I again told Roger the recusal issue was a personal issue for him. On the 25th of February, I learned that Roger had testified the day before as to one meeting with people from the White House, and that he had recused himself. On March 3rd, I read in the press about two additional meetings. It was then that I asked for the OGE examination of the contacts and issued my statement.

Now, I would like to review the subsequent events.

Our Treasury Department Inspector General's Office was asked to support the OGE examination. Mr. Fiske, the Independent Counsel, was already looking at this from the standpoint of the criminal statutes.

After I asked the OGE to examine the ethics issues involved, Mr. Fiske asked the Treasury IG to suspend his work while Mr. Fiske's investigation was underway. And the OGE also independently decided it would hold off until Mr. Fiske's work was complete so as not to interfere.

I want to point out the lengths to which the Treasury Department, at my direction, went to cooperate with Mr. Fiske, with the IG, and with the congressional committees.

Every scrap of paper that remotely looked like it might conceivably have some relation to the Madison Guaranty Savings & Loans, or to contacts with the White House, was turned over to various investigators, something on the order of 6,500 pages. We went through hundreds of thousands of documents with investigators to find the ones they needed. We used extra warehouse space to hold back our trash.

I brought in professional investigators from the IRS to go through the top offices in Treasury, mine included. We removed computers from the offices of those involved, including those used by the support staff, and had experts go through them to find anything that would be useful. We worked around the clock, quite literally. We searched offices nationwide to see what could be found. And my staff was always promptly available to Mr. Fiske, the IG, and congressional investigators to answer questions.

Now, when Mr. Fiske completed his report on this phase of his investigation and concluded that no criminal laws were broken, I asked the OGE to complete its examination of the contacts and report back to me.

Over the past weekend I received the OGE report. I released it to the public, and then I sent it to the President's Counsel. I also sent it to every Member of this Committee and the House Banking Committee.

The Office of Government Ethics, after a careful analysis of the independently-gathered facts, says I can conclude that those working at the Treasury did not, repeat, did not violate any of the standards of ethical conduct for employees of the Executive Branch of Government.

I heard a Senator say something the other day that stuck with me. He said that, in this town, an allegation is synonymous with conviction, without benefit of a trial or hearing.

Clearly, in retrospect, it might have been better if some of these meetings or contacts had not taken place, or had occurred in a different context. But when you boil it down, no criminal law was broken, and the people who work at Treasury did not violate the ethical standards. And no one at Treasury intervened in any way or interfered in any RTC action.

The OGE report did say it was troubled by some of the contacts, and it raised important issues that I believe should be addressed.

The OGE said it appeared there were misconceptions by Treasury officials that may have contributed to the contacts. Those include a possible lack of appreciation of the difference between a Treasury function and one belonging to the Resolution

Trust Corporation, and what rules apply. They also include a misconception about the standard on the use of nonpublic information, and a misconception about the function of a recusal.

Those are very good points. I would point out the unique situation in which these contacts occurred no longer exists. Mr. Altman is no longer Acting CEO of the RTC. And there no longer are lines of responsibility here that could give rise to misconceptions about job functions and the rules that apply. So the possibility for a jumbling of roles and a confusion about the rules has been greatly lessened.

I've only had this report for a few days, and I'm not going to make any knee-jerk reaction to what clearly are complex issues involving management of Treasury functions. I want to reserve judgment on that. I'm not going to make my decisions in the heat of debate. I will study this information, and any thoughts the Committee might have, and take whatever steps I consider appropriate.

Before I conclude my testimony, I want to remind the Committee of one important point: The Treasury Department has a law enforcement role, as do a number of other Government agencies. It is critical that the Department be able to communicate with other agencies, and the White House when necessary. Let me give you some examples: The White House may need to know that the Secret Service is investigating a crime in which a visiting dignitary is involved. Or the ATF might have an arms export case involving high officials of this Government, or of a foreign country.

Clearly, there is a legitimate need to discuss matters, in the proper forums, with the proper individuals. There must be a mechanism in which public officials can communicate with one another without fear they're stepping over the line.

We've seen how grey areas can be—where there's one set of rules at the RTC, and another at Treasury. And we've seen how there sometimes is no bright, white line that gives public officials the guidance they need.

I intend to work with the Attorney General, our Inspector General, and the Office of Government Ethics, to see what remedies would offer our employees better guidance. And it should be clearer for our officials how to handle the issue of confidential information as it regards press inquiries.

Mr. Chairman, Members of the Committee, two quick points in closing. First, I've been in public service for nearly 30 years. I've seen everything from the McCarthy hearings to Watergate, Iran-Contra, the Church Committee, all of it. What you have here is a unique confluence of circumstances that, when you strip away all the rhetoric, resulted in actions that broke no criminal law, did not violate the ethics rules, and did not in any way affect the Madison case. I think that when Congress concludes these hearings, Congress and Americans who have followed this matter, will conclude the same. And finally, I am proud that throughout it all the Treasury Department has continued to operate at 100 percent and done a good job.

---

## STATEMENT OF EUGENE A. LUDWIG, COMPTROLLER OF THE CURRENCY

### INTRODUCTION

Mr. Chairman and Members of the Committee, I am pleased to appear before you today in connection with your inquiry into communications between officials of the White House, the Treasury Department, and the Resolution Trust Corporation relating to the Whitewater Development Corporation and Madison Guaranty Savings and Loan Association. Too much of the public discussion of these topics has flowed from rumor, speculation, and innuendo. It is time to clear the air and get to the facts. Your hearings will help all of us set the record straight, put these issues behind us, and get back to business.

As you are aware, the Office of the Comptroller of the Currency has no jurisdiction over the Whitewater Development Corporation, nor over Madison Guaranty Savings and Loan Association. Neither in my capacity as Comptroller of the Currency, nor in my capacity as a director of the Federal Deposit Insurance Corporation, has anything related to Whitewater or Madison come before me, except for two unsolicited copies of Freedom of Information Act requests from reporters that I will describe more fully in a moment. Even so, earlier this year I recused myself both as Comptroller of the Currency and as a director of the FDIC from any matter involving the President or Mrs. Clinton in a personal capacity, including Whitewater and Madison. Beyond what any American can read in the newspapers, I have no knowledge of Whitewater or Madison.

Despite my lack of involvement in these matters, I have had contacts with the White House or the Treasury relating to Whitewater or Madison Guaranty on three occasions. I described all three in my memorandum to Mr. Edward Knight, Execu-

tive Secretary to the Secretary of the Treasury, dated March 11, 1994. I prepared that memorandum in response to the Grand Jury subpoena to the Treasury Department from the Office of the Independent Counsel, Mr. Fiske. The Treasury Department has provided a copy of it to the Committee. I am happy to go through these events again with you here today.

#### FREEDOM OF INFORMATION ACT REQUESTS

The first of the three occasions I described in my memorandum involved two Freedom of Information Act requests relating to Whitewater and Madison Guaranty. Reporters at the Washington Post and the Baltimore Sun submitted these requests to the FDIC. Somebody at the FDIC sent copies of the requests to me. I am uncertain about who sent them. I think it may have been the Acting Chairman of the FDIC, Skip Hove. These were public documents.

Upon receiving copies of the inquiries, I faxed copies to Undersecretary of the Treasury Frank Newman, Treasury Chief of Staff Josh Steiner, and Bruce Lindsey and David Dreyer in the White House press office, on December 2, 1993. To the best of my recollection, I did this because I thought they might want to know about press interest in these matters. I knew no more than I had read in the newspapers about the matters referred to in the FOIA requests. I never asked anybody to send this material to me. Nobody at the Treasury Department or the White House asked me to send it to them. I never asked about these matters. And to the best of my recollection, I never discussed these FOIA requests with anybody at the White House or the Treasury, either before or after I sent out the copies.

#### DISCUSSIONS AT RENAISSANCE WEEKEND

The second occasion occurred during the week between Christmas and New Year's 1993, at the Renaissance Weekend conference. The Renaissance Weekend is a series of symposia and presentations on topics ranging from international relations, economics and business, to the arts. Hundreds of people attend.

I was sitting in a large seminar listening to a presentation—I think it had something to do with international relations. The President entered the room and sat down near me at the table.

Because I know that what happened next is of interest to this Committee, I have tried hard to remember it as accurately as I can. As I recall, the President was reading a newspaper and we were commenting to each other on and off about the seminar. At one point, the President said something to the effect that he could not understand all of the fuss about Whitewater. He expressed the belief he had done nothing wrong, and indicated he had lost money on the transaction. He then asked me whether I thought I could advise him. I do not recall responding specifically. Our conversation moved on and, shortly thereafter, the President left the room. I assumed we would touch base with regard to his question later during Renaissance Weekend. Our entire exchange relating to Whitewater lasted perhaps 30 seconds.

Let me make two points about the President's question, because press reports may have created some confusion.

First, my collection is not that the President asked me to advise him. My recollection is that he asked me whether I thought I could advise him—that is, whether it would be permissible to give him advice. It was clear to me that the President did not expect and did not want me to do anything inappropriate or improper.

Second, some press accounts suggest that the President and I remember our conversation differently. I do not remember exactly what he said that gave me this impression, but I understood the President to be asking whether I could properly provide advice related to financial institutions regulation. The President and White House Counsel Cutler have recently said that the President's interest was narrower, that he only wanted names of people who might comment publicly on these matters. That is not what I understood, but it may well have been what the President intended. Our exchange on this point was brief, perhaps 30 seconds. It took place in a noisy room, with many distractions. We could easily have miscommunicated.

After the seminar, I went back to my hotel room. I was not sure how to follow up on the President's question. I had not followed Whitewater closely in the newspapers and did not know much about it. Because he is the President, I wanted to be responsive to him. But having practiced law in Washington for 20 years, I understood the importance of being cautious and careful in responding to such an inquiry. I felt I needed some basic information about the subject. I also wanted to get the sense of others about whether it would be appropriate for me to advise the President on this subject. I wanted to give a well-founded and reasoned answer.

My first call was to Josh Steiner at the Treasury Department. As best I can recall, I called him just as a starting point—somebody who could point me in the direction

of the right people to speak with about these matters. I think I was also trying to figure out how to reach Jean Hanson, the General Counsel to the Treasury Department. My conversation with Mr. Steiner was extremely brief. As best I remember, Mr. Steiner just suggested that I speak to Ms. Hanson.

I reached Jean Hanson and had another brief conversation. I told her, as I told others I spoke with later, that I did not want information that was not public. I do not remember exactly what Ms. Hanson said, but I understood from her that the Whitewater matter involved a personal loan of the Clintons. I came away with the impression she did not know much about it. I also recall that she seemed to have reservations about the idea of my providing advice to the President. She suggested that I talk to White House Counsel Bernard Nussbaum.

I tried to call Mr. Nussbaum, but I did not get through. Instead, I got passed along from one person to another in the White House Counsel's Office. I am not sure I remember all the people I spoke with in this series of phone calls. I know Cliff Sloan has testified that he spoke with me at some point in this series of calls. This is entirely possible, but I do not recall it. I do recall speaking with Bill Kennedy and Joel Klein.

In my conversation with Mr. Kennedy I again sought a general sense of what Whitewater was about and whether I could appropriately advise the President about it. I do not remember getting any new information from Mr. Kennedy. I do recall that he, too, seemed to have reservations about my advising the President on this subject. Mr. Kennedy recommended that I speak to Joel Klein.

I believe Mr. Klein was not available when I first tried to reach him, and that he subsequently called me back. I then learned that he was also attending the Renaissance Weekend. I do not remember clearly whether we finally spoke in person or over the phone. We were both part of a large informal dinner group that evening, and the conversation could have occurred then, but my best recollection is that we spoke by phone. I do clearly remember that he was very negative about the idea of my advising the President on these matters.

Reflecting on the President's question and the reactions of Jean Hanson, Bill Kennedy, and Joel Klein, I concluded that I could not appropriately give the President legal or regulatory advice relating to Whitewater. I felt, in the end, that any effort to provide informed advice could lead me into discussions with the President and others that might be inappropriate for me as a regulator and director of the FDIC.

The next day, I literally bumped into the President and Mr. Klein in the hallway near a seminar room. Without further discussion, we all agreed that I should not provide advice to the President about these matters.

That was the end of it. The President did not ask me to advise him about Whitewater, but rather whether it would be permissible for me to advise him. Upon reflection, within less than a day, we all concluded that I should not. And I did not. Everyone involved—including the President—took great care to avoid any inappropriate actions. No advice was given. No confidential information changed hands.

#### TELEPHONE CONVERSATION WITH MARGARET WILLIAMS

The third occasion on which I recollect contact with a White House or Treasury official regarding Whitewater—aside from occasional passing references in the course of other discussions—was January 19, 1994. I was concerned about the steady trickle of news stories about Whitewater. I concluded that I would properly offer the White House one piece of advice drawn from my years of legal practice in Washington: disclose everything. I called Margaret Williams, Hillary Clinton's Chief of Staff, to say this. I had no way of knowing if anything remained undisclosed at that point. I also told her I thought they should put at least one person to work full time on the matter, if they had not already done so. I do not recall Ms. Williams saying anything other than "thank you." I did not ask for and we did not exchange any information. There were no follow-up communications.

#### CONCLUSION

These three occasions—the faxes, some brief discussions at Renaissance Weekend, and a short phone call to Margaret Williams—are the sum and substance of my contacts with the Treasury Department and the White House relating to Whitewater and Madison Guaranty. I have done my best to recall them as accurately and completely as I can. I hope my recollections are useful to you.

I will be pleased to answer any questions you may have.

## TESTIMONY OF JOEL I. KLEIN

Mr. Chairman and Members of the Committee:

My name is Joel I. Klein. Since December 1, 1993, I have served as Deputy Counsel to the President—first under Bernard Nussbaum and then under Lloyd Cutler.

My only direct involvement in any of the so-called White House-Treasury contacts relates to the matter that Mr. Ludwig just discussed. In late December of last year, my family and I were attending a Renaissance Weekend program in Hilton Head, South Carolina, at which the President was also in attendance. At about 4 o'clock on December 30th, I received a call from Associate White House Counsel Neil Eggleston, who stated that Eugene Ludwig, the Comptroller of the Currency, had called Cliff Sloan, also an Associate White House Counsel, and requested information concerning the Whitewater/Madison Guaranty matter, indicating that the President had asked to speak to him about it. Mr. Eggleston said he and Mr. Sloan thought that even though Mr. Ludwig was not involved in the matter, it would be better that the President not talk to Mr. Ludwig, given his position as Comptroller. I agreed and told Mr. Eggleston that I would handle it.

I then went to see the President and said that my office had called and indicated that Mr. Ludwig had requested information so that he could talk to the President about Whitewater. The President responded that Mr. Ludwig must have misunderstood him because he had only wanted to ask for the names of people knowledgeable in banking and real estate who might be able to explain Whitewater to the public in simple terms. This matter had been much in the news lately, and the President said he was concerned that it was not being fairly understood. I replied that even that kind of innocuous conversation could subsequently be misconstrued and that it would be preferable if the President had no discussions of any sort with Mr. Ludwig about Whitewater. The President agreed and asked me to so inform Mr. Ludwig.

I returned to my room and called Mr. Ludwig, whom I had not previously met. He was not there and I left a message. Later that evening I met Mr. Ludwig by chance. I took him aside, explained that I had learned of his call to Mr. Sloan, and that I had talked to the President, who decided that the two of them should not discuss anything about Whitewater. And I believe that was the end of the matter.

My only other involvement in these matters came about in response to Roger Altman's February 24, 1994, testimony before this Committee. On the following day, Friday the 25th, Cliff Sloan came to my office and told me that, although Mr. Altman had said there was only one meeting between White House and Treasury officials concerning Madison, Mr. Sloan was aware of two additional meetings and several phone conversations with Jean Hanson that had taken place in late September through early October, 1993. In addition, I had previously learned from Mr. Nussbaum, in a conversation that occurred approximately one week after the February 2nd meeting, that Mr. Altman had raised the issue of his recusal at that meeting. The press accounts on February 25th quoting his testimony made no reference to this matter. Although I had no information about Mr. Altman's knowledge, I was concerned about these omissions in his testimony.

On Monday, February 28, 1994, when Mr. Nussbaum returned from an out-of-town trip, I raised these concerns with him. After we discussed the matter, Mr. Nussbaum asked me to talk with John Podesta, who was already aware of these issues, having discussed them with Mr. Eggleston. Mr. Podesta subsequently met with several members of the White House staff, including myself, to decide what actions would be appropriate. After these discussions, Mr. Podesta called Mr. Altman and relayed our concerns about his testimony.

Mr. Chairman, that sums up my involvement in these events. I will be glad to amplify in response to your questions. Thank you.

## STATEMENT OF W. NEIL EGGLESTON

My name is Neil Eggleston. I am an Associate Counsel to the President. I started working at the White House in September 1993, just before the events that are the subject of these hearings began.

I have spent a large portion of my professional career in public service. I am proud of that public service, and proud that I have worked in each of the three branches of Government. In the late 1970's, I served as a law clerk to two Federal judges, including then Chief Justice Warren E. Burger. From 1981 through early 1987, I was an Assistant U.S. Attorney in the Southern District of New York. I left that job in 1987 to work as Deputy Chief Counsel of the House of Representatives Select Committee on the Iran-Contra Affair.

As the previous testimony before this Committee makes clear, I was involved in some of the contacts between the White House and the Treasury Department. As to each of those contacts, I was acting in my official capacity, assisting others in responding to press or congressional issues.

The first meeting that I attended with members of the Treasury Department occurred on October 14, 1993. That meeting related to press inquiries that Treasury had received about criminal referrals on the Madison matter. Those press inquiries were apparently prompted by detailed leaks from the RTC to the news media, including the fact that the Clinton's names appeared in the referrals. I do not believe that I learned any information during that meeting that was not prompted by press inquiries. Indeed, leaks from the RTC appeared a few weeks later in articles in the Washington Post and the New York Times. I have no reason to believe that any White House official took any steps to influence the RTC based on the information that the White House received concerning the criminal referrals.

I also participated in the February 2, 1994, meeting with Mr. Altman in the White House. During that meeting, I learned nothing whatsoever about the substance of the RTC civil investigation into Madison. The meeting principally concerned the procedures the RTC would follow in deciding whether to bring civil actions or to seek a tolling agreement to prevent the running of the then-applicable statute of limitations.

With regard to the subject of Mr. Altman's consideration of the recusal issue, I recall that three points were made during that meeting: (1) that if Mr. Altman had a legal or ethical obligation to recuse, he would do so immediately; (2) that regardless of whether he formally recused himself, he was going to be recused *de facto* since he stated that he would follow whatever recommendation was made to him by the career officials at the RTC; and (3) that the decision of whether Mr. Altman should recuse was entirely up to him.

Finally, with regard to the February 24, 1994, RTC oversight hearing before the Senate Banking Committee, I participated with others in the White House in an effort to ensure that Mr. Altman give a full account of the White House-Treasury contacts.

I have been subject to a deposition of several hours duration by the staff of this Committee and discussed with them in detail my knowledge of the White House-Treasury contacts. I am prepared to answer any questions the Members of this Committee may have about this matter.

---

#### STATEMENT OF CLIFFORD M. SLOAN

Mr. Chairman and Members of the Committee, my name is Clifford Sloan. I want to thank you for the opportunity to appear today before this Committee.

I have been an Associate Counsel to the President since June of 1993.

In the course of my duties in the White House Counsel's Office, I was contracted by officials of the Department of the Treasury in connection with press inquiries and interest in Madison Guaranty Savings & Loan. These conversations consisted of a brief mention by Jean Hanson, the General Counsel of the Treasury, after a meeting at the White House on a different subject on September 29, 1993; a few subsequent telephone calls from Ms. Hanson in the days thereafter; and a meeting of White House and Treasury officials on October 14, 1993. A few months later, on December 30, 1993, the Comptroller of the Currency, Mr. Eugene Ludwig, also called me briefly concerning Madison.

As I know you are aware, I recently spent several hours in a deposition with both the Majority and Minority staff of this Committee, answering their questions about this matter. And of course I will be happy to answer any questions here today as well.

Before I do so, I would like to make just a couple of brief points.

Neither I, nor anyone else in the White House, ever sought to influence, or even to comment upon, the decision to refer the Madison matter to the Justice Department for further investigation. Nor did I or any White House personnel ever seek to influence or comment about the manner in which the referral was worded or who was mentioned in it.

Likewise, to my knowledge no Treasury or RTC official ever sought or invited any comment by the White House at any time about whether a referral should be made or what form it should take. From the first mention of the Madison referral by Ms. Hanson on September 29, each of these conversations was in the context of actual or potential press interest in the matter.

I will be happy to help the Committee in any way I can.

Thank you.

## STATEMENT OF BETH NOLAN

Mr. Chairman and Members of the Committee: My name is Beth Nolan. Since February 1993, I have been Associate Counsel to the President. I also serve as the Alternate Designated Agency Ethics Official for the White House; the Counsel to the President serves as Designated Agency Ethics Official. While serving in the White House, I am on leave from my position as a law professor at the National Law Center, George Washington University, where I have taught courses in legal ethics, Government ethics, and constitutional law. Before I began teaching, I served for four years, from 1981 to 1985, as a staff attorney in the Office of Legal Counsel of the Department of Justice.

As Alternate Ethics Official, my responsibilities include matters arising under the conflict of interest laws and the standards of conduct, as well as other matters concerning Administration ethics policy. My job involves frequent consultation with ethics officials throughout the Executive Branch.

My only contacts with a Treasury official on the Madison Guaranty matter fell into this area of consultation: I had several telephone conversations with Dennis Foreman, the Designated Agency Ethics Official for the Department of the Treasury. I spoke with Mr. Foreman initially at the request of Bernard Nussbaum, then Counsel to the President, regarding the recusal standards applicable to Presidential appointees, as they affected Roger Altman, Deputy Secretary of the Treasury and Interim CEO of the Resolution Trust Corporation.

Mr. Foreman and I discussed the general standards, and he told me that he intended to consult Art Kusinski, the Designated Agency Ethics Official of the RTC, and Stephen Potts, the Director of the Office of Government Ethics, to evaluate the recusal issue. This made clear to me that a decision process was in place in which the recusal decision would receive serious consideration by the appropriate officials. It is my recollection that I had a brief phone call with Mr. Nussbaum in which I reported these matters to him, and I received no follow-up instructions to do anything further. Mr. Foreman later advised me that he had been in contact with both the RTC and OGE, and that a legal memorandum had been prepared and forwarded to Mr. Altman setting forth the standards applicable to his recusal.

These phone calls constitute the sum total of my contacts with the Treasury Department on the Madison Guaranty matter. My conversations with Mr. Foreman were fully consistent with the duties of a White House ethics lawyer, and, indeed, the Director of the Office of Government Ethics has determined that they were "similar to the types of discussions that take place daily between Executive Branch ethics officials and the White House ethics expert on matters involving Presidential appointees."

I will be happy to answer your questions.

DONALD W. RIEGLE, JR., MICHIGAN, CHAIRMAN

PAUL S. SARFANES, MARYLAND	ALFONSE M. D'AMATO, NEW YORK
CHRISTOPHER J. DODD, CONNECTICUT	PHIL GRAMM, TEXAS
JIM SASSER, TENNESSEE	CHRISTOPHER S. BOND, MISSOURI
RICHARD C. SHELBY, ALABAMA	CONNIE MACK, FLORIDA
JOHN F. KERRY, MASSACHUSETTS	LAUCH FAIRCLOTH, NORTH CAROLINA
RICHARD H. BRYAN, NEVADA	ROBERT F. BENNETT, UTAH
BARBARA BOXER, CALIFORNIA	WILLIAM V. Roth, JR., DELAWARE
BEN NINH THORSE CAMPBELL, COLORADO	PETE V. DOMENICI, NEW MEXICO
CAROL MOSLEY SMITH, ILLINOIS	
PATTY MURRAY, WASHINGTON	

## United States Senate

COMMITTEE ON BANKING, HOUSING, AND  
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

STEVEN B. HARRIS, STAFF DIRECTOR AND CHIEF COUNSEL  
HOWARD A. MENELL, REPUBLICAN STAFF DIRECTOR

September 28, 1994

The Honorable Lloyd Bentsen  
Secretary of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, D.C. 20220

Dear Secretary Bentsen:

Enclosed are some post hearing questions from this Committee's hearings on the Whitewater matter. We will be publishing your responses to these questions in the printed version of our hearings. In order to complete the hearing record in a timely fashion we would appreciate your answers to the enclosed questions by Friday, October 7, 1994.

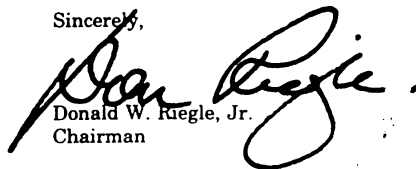
It would be greatly appreciated if you would have your responses formatted in the following manner:

- (1) Please title your responses indicating which Senator asked the question (e.g., "Questions from Chairman Riegle").
- (2) Set forth the question, then the answer to it, and single-space both questions and answers.
- (3) Include the number of each question and answer (e.g., "Question 1" and "Answer 1").
- (4) Do not use all capital letters in responding to these questions.

Please send your reply to Kelly Cordes, the Committee's chief clerk. She will transmit copies of your response to the Committee's publication office.

If you have any questions please contact Ms. Cordes at (202) 224-1568.

Sincerely,

  
Donald W. Riegle, Jr.  
Chairman

Enclosure





DEPARTMENT OF THE TREASURY  
WASHINGTON

ASSISTANT SECRETARY

October 4, 1994

The Honorable Donald W. Riegle, Jr.  
Chairman  
Committee on Banking, Housing  
and Urban Affairs  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

This is an interim response to your letters of September 28, 1994, to Secretary Bentsen and Edward S. Knight. With your letters you forwarded follow-up questions which Senator Bond proposed.

Both the Secretary and Mr. Knight are out of the country until October 12th. Consequently, we will not be able to meet your request to have the responses to the Committee by October 7th. We will, however, attempt to respond to Senator Bond's questions as soon as possible after the Secretary and Mr. Knight return.

Please let me know if I can be of further assistance to you or the Committee in this matter.

Sincerely,

Michael B. Levy  
Assistant Secretary  
(Legislative Affairs)



DEPARTMENT OF THE TREASURY  
WASHINGTON

ASSISTANT SECRETARY

October 21, 1994

The Honorable Donald W. Riegle, Jr.  
Chairman  
Senate Committee on Banking,  
Housing and Urban Affairs  
Washington, D.C. 20510-6075

Dear Mr. Chairman:

As you requested in your September 28, 1994 letters to Secretary Bentsen, Edward S. Knight and Dennis I. Foreman, we are providing the Committee with answers to Senator Bond's supplemental questions. Because the questions addressed to Secretary Bentsen required information to be gathered from various parts of the Department, the answers are provided on behalf of the Department, not Secretary Bentsen personally.

I trust that the attached answers fully respond to Senator Bond's inquiries.

Sincerely,

Michael B. Levy  
Assistant Secretary  
(Legislative Affairs)

Attachments

**QUESTIONS FROM SENATOR BOND****Department of the Treasury**

These answers reflect information available to the Department of the Treasury.

**Question 1**

Please provide a description of the policy followed to determine what documents would be produced by the Department of the Treasury ("Treasury") to the Senate Banking, Housing and Urban Development Committee ("Committee"). Please provide the dates that documents were produced to the Committee.

**Answer 1**

The policy followed by Treasury was to cooperate fully with the Committee, and that specifically included providing all information known or believed to be responsive to the Committee's requests. Questions concerning specific documents were discussed with the Special Majority and Minority Counsel and any doubt was resolved in favor of disclosure. Documents were produced to the Committee on July 1, 6, 13, 16, 17, 18, 19, 22, 25, 26 and 29, and on August 31, 1994.

**Question 2**

During his Treasury and Resolution Trust Corporation ("RTC") deposition, John Bowman was shown a document numbered 5658 (Bowman Treasury Deposition at 15). From whose file was this document obtained? Was this document produced to the Committee? Are there other copies of this document in Treasury personnel files? If there are other copies of this document, why were they not produced to the Committee?

**Answer 2**

This document was produced from the office of former General Counsel Jean Hanson. It was not produced to the Committee because it was not responsive to the Committee's request for documents. No other copies of this document were found in Treasury's files.

Question 3

Lloyd Cutler requested that all White House documents provided to the Treasury/RTC investigatory team be returned as soon as the investigation was completed. When were the documents returned?

Answer 3

The White House documents have not been returned. The Treasury Office of the Inspector General ("OIG") has informed us that it will retain the White House documents until the Office of the Inspector General determines that there is no longer any foreseeable need to refer to the documents.

Question 4

When were you first provided a draft of the Treasury/RTC Report that was ultimately transmitted to OGE on July 29, 1994? When did you first receive a draft of the chronology prepared by the Treasury/RTC investigators?

Answer 4

The Deputy Inspector General provided a draft of the report on the Treasury/White House contacts to Treasury on July 22, 1994. The draft chronology contained in the draft report was the first chronology provided to Treasury, and therefore, it was also first received on July 22.

Question 5

Why did non-Inspector General personnel communicate with the White House about the release of the Treasury/RTC transcripts to the White House?

Answer 5

The Treasury officials who communicated with the White House regarding release of transcripts were responding to White House requests. See Answer to Question No. 6.

Question 6

Did any Treasury personnel consult with RTC personnel about the propriety of releasing the Treasury/RTC depositions before the Treasury/RTC depositions were released to the White House? If not, why not?

Answer 6

The first disclosure of transcripts to White House personnel was made jointly by the Treasury and RTC Inspector Generals' offices. On July 18, 1994, at the request of the Office of Government Ethics ("OGE"), witnesses, including White House witnesses, who had been interviewed by the OIGs were provided with copies of their own interviews for transcript verification.

The Treasury investigation into Treasury/White House contacts regarding the collapse of Madison Guaranty Savings and Loan was initiated as an outgrowth of the Secretary's request to the Office of Government Ethics for an opinion on the propriety of those contacts. At the request of OGE (which has no investigative staff or expertise), the Office of the Inspector General at Treasury, assisted by the Office of the Inspector General at the Resolution Trust Corporation, led the investigation into the substance and purpose of the contacts, interviewing 25 current and former Federal employees during July 1994. On July 22, 1994, after the OIGs completed all of the interviews they planned to conduct,<sup>1</sup> Treasury's OIG provided a draft of the report to the Office of Government Ethics and the Secretary. The draft included copies of witness interview transcripts.

Concurrently with the OIG investigation, Mr. Cutler, at the request of the White House Chief of Staff, was conducting a similar inquiry into the substance and purpose of Treasury/White House contacts. Had he chosen to, Mr. Cutler could have questioned the same witnesses that had been questioned by OIG. Instead, Mr. Cutler chose to rely in part on a review of OIG transcripts and requested copies of the transcripts from Treasury. As Secretary Bentsen testified before the Committee, providing the transcripts to Mr. Cutler was appropriate because it would enable the Special Counsel to prepare prudently for his July 26 testimony before the House Banking Committee and August 5 testimony before the Senate Banking Committee. The Deputy Inspector General, who considered Mr. Cutler's request and the Secretary's views, determined that it would not interfere with

---

<sup>1</sup> OGE subsequently asked OIG to interview Comptroller of the Currency Eugene Ludwig. Mr. Ludwig's interview did not affect the substance of any of the other OIG interviews.

the investigation because all of the planned interviews had been completed and agreed to release the transcripts to Mr. Cutler on condition that the transcripts provided to him by Treasury would be used solely to assist Mr. Cutler in preparing for his testimony and would not be shared with any other witnesses. These conditions were communicated to Mr. Cutler and the transcripts were provided to him on July 23. Tab 1. As the enclosed August 3, 1994 letter from Mr. Cutler to Senator Riegle indicates, Mr. Cutler scrupulously adhered to this agreement. Tab 2.

Accordingly, for the following reasons, there was no need to consult RTC and, therefore, no such consultation occurred, before providing the transcripts to Mr. Cutler:

- The investigation was an outgrowth of Treasury's own request to the Office of Government Ethics;
- The investigation was led by the Treasury Office of the Inspector General;
- Given that the interviews addressed Treasury/White House contacts that already had taken place, no new information concerning RTC matters was imparted to the White House;
- White House personnel already had copies of their own interview transcripts;
- Mr. Cutler, who was conducting a parallel inquiry on behalf of the White House and who had fully cooperated with the OIG investigation, needed access to the transcripts to ensure the accuracy of his scheduled Congressional testimony; and
- The transcripts were provided under a written agreement that explicitly restricted their use to appropriate parameters.

#### Question 7

Provide the dates that all depositions or selected depositions were made available to persons other than the deponent or Treasury/RTC investigative staff. When was Mr. Altman given access to Ms. Hanson's deposition? Was Mr. Altman provided access to depositions other than Ms. Hanson's?

#### Answer 7

Treasury went far beyond what was legally required in its efforts to cooperate fully with the requests of various investigators.

When Independent Counsel Fiske and the Treasury and RTC OIGs requested that no Treasury witness be shown statements of other witnesses or given access to documents from offices other than their own until all witnesses had been interviewed, in the spirit of cooperation, we agreed. Indeed, the Department even acceded to what, as far as we are aware, was an unprecedented request from the Committee's special counsel that the Department not coordinate the testimony of senior officials called to testify about their official activities until the Committee's staff completed their depositions of all of the witnesses. We agreed to this extraordinary request even though it greatly impaired the ability of the Department to learn the scope and extent of the events at issue and prepare fully for the Committee's hearings and support Departmental witnesses. Accordingly, it was not until July 26, after the Treasury and RTC Inspector Generals had completed all of their witness interviews and the staff of the Senate Banking Committee had completed their depositions, that counsel for all Treasury witnesses were permitted to have access to transcripts of all Treasury and White House witnesses' depositions, including that of Ms. Hanson.

#### Question 8

When OGE communicated that the Standards of Ethical Conduct for Executive Branch Employees was narrow in scope, and that a determination that the Standards had not been violated would not indicate that improprieties or even criminal conduct had not occurred, why did Treasury not seek to determine whether improprieties or criminal conduct had occurred?

#### Answer 8

The question appears to be based on a misunderstanding of the OGE report's discussion of the difference between the Standards of Ethical Conduct as a set of enforceable rules and the "far more expansive concept" of ethics as a system of moral principles. OGE recognized that, in the broadest sense, "ethical judgments" can always be questioned but explained that the Standards provide a basic set of widely-accepted rules against which the conduct of employees can be rigorously judged. OGE's review was not narrowly focused. Its 27-page analysis is exhaustive. OGE considered all of the facts developed by the Treasury and RTC Inspector Generals' investigation in light of the Standards of Ethical Conduct and concluded that they were not violated. Treasury is unaware of any other statute or rule governing the conduct of Treasury employees that the facts as developed by the IGs would indicate was violated. To date, three independent investigations -- those of Independent Counsel Fiske, Special Counsel Cutler and the IGs -- have not concluded any differently.

Question 9

Please provide all analyses indicating that it is appropriate for White House personnel to receive confidential RTC information pertaining to criminal referrals from either RTC or Treasury personnel.

Answer 9

We refer the Committee to, among other things, the testimony before the Committee of Special Counsel Cutler and Secretary Bentsen, Independent Counsel Fiske's June 30, 1994 report, the Office of Government Ethics July 30, 1994 report, "Cutler's Lessons for Mikva" by Terry Eastland (Wall Street Journal, Aug. 17, 1994, p. A13), and "A 'Heads Up' History: From Truman to Eisenhower" by Lloyd Cutler (Washington Post, Aug. 3, 1994, p. A17).

Question 10

Did you request the Treasury Inspector General ("IG") to assist the Office of Government Ethics ("OGE") at the same time that you requested the RTC IG to assist OGE? When were these requests made? What was the format of these requests?

Answer 10

OGE made the first approach to the Treasury and RTC OIGs and requested fact-finding assistance in connection with the Secretary's request for OGE's review of the Treasury/White House contacts. See tab 3. In the interim, Independent Counsel Fiske asked that OGE and the OIGs suspend their review pending completion of his investigation. When Mr. Fiske issued his report on June 30, 1994, the Secretary, on the same date, asked Treasury's Deputy Inspector General, and, through RTC's Deputy CEO, RTC's IG, to provide OGE with whatever assistance the OGE needed. Copies of the Secretary's requests are attached at tab 4.

Question 11

Please provide a copy of the letter from Mr. McHale to Ms. Sherbourne [sic] which describes how the White House was able to use the deposition transcripts?

Answer 11

A copy of Mr. McHale's letter to Ms. Sherburne is attached at tab 1.

Question 12

Why did Francine Kerner participate in the Treasury/RTC investigation of Treasury/RTC contacts with the White House?

Answer 12

Ms. Kerner participated in the investigation because the Deputy IG asked her to participate. In her capacity as Counsel to the Inspector General, Ms. Kerner provides advice and legal services to Treasury's Office of the Inspector General on many sensitive audits and investigations.<sup>2/</sup>

As discussed in the answer to question 15, Ms. Kerner provided advice and legal services under a special agreement between the Office of the Inspector General and the Office of the General Counsel which placed her solely under the supervision of the Deputy Inspector General in connection with the OIG investigation into Treasury/White House contacts concerning the collapse of Madison Guaranty Savings and Loan.

Question 13

Why were the Treasury/RTC depositions turned over to the Committee at a different time than they were turned over to the White House?

Answer 13

As previously stated in response to questions 5 and 6, on July 18, 1994, at the request of the Office of Government Ethics, all witnesses interviewed by the OIGs, including White House witnesses, were provided copies of transcripts of their own interviews for transcript verification. Also, on July 23, copies of the transcripts were provided only to Special Counsel Cutler and his immediate staff for the limited purpose of enabling Mr. Cutler to prepare for his report to the House and Senate

---

<sup>2</sup> For the record, Ms. Kerner was hired by the Department of the Treasury in September 1992 by former IG Donald Kirkendall and former General Counsel Jeanne Archibald. She is a career Federal employee who has previously served as Counsel to the Inspector General and a senior attorney for ethics at the Department of Commerce. Before joining the Federal government, Ms. Kerner was an Assistant District Attorney in the Kings County District Attorney Office in Brooklyn, New York, where she tried major felony offenses.



Committees. Treasury did not make any broader disclosure of the transcripts to White House personnel before the transcripts were provided to the Committee.

Question 14

Please explain the guidelines followed by the Department of Treasury in producing documents to the Committee. What was the scope of the document production? Was it the same as for Independent Counsel Fiske?

Answer 14

The guideline followed by Treasury was to cooperate fully with the Committee, and that specifically included providing all Treasury documents known or believed to be responsive to the Committee's requests unless an alternative approach was agreed to in discussions with the Special Majority and Minority Counsel. Any doubt was resolved in favor of disclosure. The same guideline was followed with respect to the document requests of the Independent Counsel and the OIGs.

The scopes of document productions requested by the Committee and by the Independent Counsel differed. (Copies of the Committee's request and the subpoena are attached at tab 5.) The scopes of Treasury's productions to the Committee and to the Independent Counsel differed accordingly. For example, the Committee asked for and received copies of Treasury policies "concerning communications between the Department of the Treasury and other Executive branch or independent entities, including the White House and the Resolution Trust Corporation." Independent Counsel Fiske did not ask for this information.

Question 15

Did you or any other Treasury employee discuss whether Francine Kerner should assist OGE in its preparation to report on the ethical propriety of White House - Treasury/RTC contacts? If the answer to this question is yes, state when these conversations took place and list the individuals involved in these discussions.

Answer 15

We are not aware of any Treasury employee outside the Inspector General's office discussing whether Ms. Kerner should assist OGE in this work. Within OIG, the only discussions of which we are aware were between Deputy IG Robert Cesca, Assistant IG for Investigations James Cottos and IG Counsel Francine Kerner. These discussions occurred on or before June 27, 1994.

As indicated previously, on or about June 27, 1994, Ms. Kerner expressed to Deputy General Counsel Dennis Foreman and others in the General Counsel's office her view that an agreement modifying her supervisory relationship was needed. They strongly agreed with Ms. Kerner. An agreement was reached on June 27, 1994, which placed Ms. Kerner solely under the supervision of the Deputy Inspector General in connection with the OIG investigation into Treasury/White House contacts concerning the collapse of Madison Guaranty Savings and Loan. A copy of a memorandum from the Deputy Inspector General to the General Counsel documenting the agreement, which also was sent to RTC's OIG and OGE, is attached as tab 6.

Question 16

Why did Treasury provide documents directly to the Independent Counsel but not provide the same documents to the Committee. [sic] See Letter from Kenneth R. Schmalzbach to J. William Codinha, dated July 13, 1994, with Attachments).

Answer 16

Please see the answer to question no. 14. Again, the Committee's document request was not the same as Independent Counsel Fiske's subpoena. (Copies of the subpoena and the Committee's request are attached at tab 5.) Accordingly, some documents were provided to Independent Counsel Fiske that were not provided to the Committee and some documents were provided to the Committee that were not provided to Independent Counsel Fiske. For example, Mr. Fiske sought all documents relating or referring to the criminal referrals by the RTC concerning Madison Guaranty Savings & Loan. The Committee did not request such documents.

In addition, when an agency responding to Congressional or other requests for information has in its possession documents that either originated with another agency or contain information that originated with another agency, normal Executive branch procedure calls for the responding agency either to consult with the originating agency or refer documents to the originating agency for response. Treasury followed this procedure, which is referred to as the "third agency rule," for RTC information and documents sought by the Committee. The "third agency rule" is not normally invoked when an agency is responding to a grand jury subpoena, and it was not invoked by Treasury as Treasury responded to the subpoena issued by the grand jury investigating Treasury/White House contacts.

Question 17

Please provide a typed transcription of Document 2732.

Answer 17

We have been unable to identify the author of document 2732, but we believe it reads as follows:

First Learned

I'm not going to get involved in tic by tic [????] --  
I've asked OIG & Treas staff to get to bottom of this

DONALD W. RIEGLE, JR., MICHIGAN, CHAIRMAN

PAUL S. SARBAHUS, MARYLAND	ALFONSE M. D'AMATO, NEW YORK
CHRISTOPHER J. DODD, CONNECTICUT	PHIL GRAMM, TEXAS
JIM SASSER, TENNESSEE	CHRISTOPHER S. BOND, MISSOURI
RICHARD C. SHELBY, ALABAMA	CONNIE MACK, FLORIDA
JOHN F. KERRY, MASSACHUSETTS	LAUREN FARMLOTH, NORTH CAROLINA
RICHARD H. BRYAN, NEVADA	ROBERT F. BENNETT, UTAH
BARBARA ROSEN, CALIFORNIA	WILLIAM V. ROY, JR., DELAWARE
BEN RICHTHORSE CAMPBELL, COLORADO	PETE V. DOMENICI, NEW MEXICO
CAROL MOSELEY-BRAUN, ILLINOIS	
PATTY MURRAY, WASHINGTON	

STEVEN B. HARRIS, STAFF DIRECTOR AND CHIEF COUNSEL  
HOWARD A. MENELL, REPUBLICAN STAFF DIRECTOR

## United States Senate

COMMITTEE ON BANKING, HOUSING, AND  
URBAN AFFAIRS

WASHINGTON, DC 20510-6075

September 28, 1994

Mr. Edward S. Knight  
Executive Secretary  
Department of Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, D.C. 20220

Dear Mr. Knight:

Enclosed are some post hearing questions from this Committee's hearings on the Whitewater matter. We will be publishing your responses to these questions in the printed version of our hearings. In order to complete the hearing record in a timely fashion we would appreciate your answers to the enclosed questions by Friday, October 7, 1994.

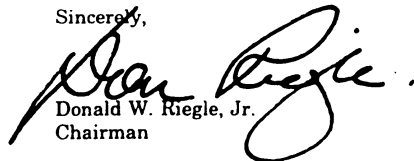
It would be greatly appreciated if you would have your responses formatted in the following manner:

- (1) Please title your responses indicating which Senator asked the question (e.g., "Questions from Chairman Riegle").
- (2) Set forth the question, then the answer to it, and single-space both questions and answers.
- (3) Include the number of each question and answer (e.g., "Question 1" and "Answer 1").
- (4) Do not use all capital letters in responding to these questions.

Please send your reply to Kelly Cordes, the Committee's chief clerk. She will transmit copies of your response to the Committee's publication office.

If you have any questions please contact Ms. Cordes at (202) 224-1568.

Sincerely,



Donald W. Riegle, Jr.  
Chairman

Enclosure

## QUESTIONS FROM SENATOR BOND

Edward S. KnightQuestion 1

In a letter signed by you on July 1, 1994 and sent to Chairman Riegle, you stated: "We ask that you permit us, with the assistance of private counsel, to show you unredacted copies of the documents produced with redactions." Did you make the same offer to the ranking minority member on the Committee?

Answer 1

Yes. See tab 7.

Question 2

Did you discuss with anyone whether Francine Kerner should assist the Office of Government Ethics in the investigation requested by Secretary Bentsen? If the answer is yes, with whom did you discuss this issue, and when did this/these discussion/s take place?

Answer 2

No.



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

Tab 1

July 23, 1994

**BY HAND**

Jane Sherburn, Esquire  
Office of the White House Counsel  
The White House  
Washington, D.C.

Dear Jane:

Enclosed are copies of the transcripts of all but one of the interviews conducted by the Treasury Inspector General as part of his investigation into contacts between Treasury and White House officials concerning Madison Guaranty. We have not yet received the transcript of the interview of Mr. McLarty.

As we discussed, these transcripts are being provided to you solely to assist you in the preparation for Mr. Cutler's testimony before the House and Senate Banking Committee hearings. You have agreed that the transcripts we are providing to you with this letter will not be disclosed publicly or shown to individuals (other than Mr. Cutler) who may be called as witnesses by either Committee until such time as we advise you that this restriction is no longer necessary. Similarly, you have agreed not to disclose these transcripts to counsel for any such individuals. Please let me know immediately if my understanding of our agreement is not correct.

Sincerely,

A handwritten signature in dark ink, appearing to be "S. J. McHale".

Stephen J. McHale  
Deputy Assistant General Counsel  
(Administrative & General Law)

## THE WHITE HOUSE

WASHINGTON

Tab 2

August 3, 1994

The Honorable Donald W. Riegle, Jr.  
Chairman  
Senate Committee on Banking, Housing  
and Urban Affairs  
Senate Dirksen 534  
Washington, D.C. 20510-6075

Dear Chairman Riegle:

At the hearings yesterday, Senator Bond raised some questions about the ethical propriety of the cooperative arrangements made between the Treasury and the White House concerning their respective investigations into the so-called Treasury-White House contacts.

As you know, Secretary Bentsen asked the Office of Government Ethics to review the conduct of Treasury officials for its opinion on their compliance with the Standards of Conduct issued by that office. OGE asked the Treasury and RTC Inspectors General to conduct the fact finding on which it would rely for its conclusions. About the same time, White House Chief of Staff Mack McLarty asked me to undertake a similar review as to the White House officials involved.

Neither the Inspectors General nor I could begin this review until approximately July 1, when Independent Counsel Robert Fiske concluded his investigation of this subject. Mr. Fiske had requested each of us not to interview the Treasury, White House, or RTC officials involved until his own investigation had been completed. This is an understandable request by a careful prosecutor, and we both complied with it.

Since the congressional hearings were scheduled to begin in the last week of July, we each had a very brief time frame in which to complete numerous interviews. The Treasury and RTC Inspectors General naturally wanted to interview the White House officials who participated in these contacts, as well as the Treasury and RTC officials involved. Similarly, we naturally wanted to do the same. It was essential to the reliability of both reviews that they be based on the testimony of all those concerned.

The Inspectors General took sworn depositions, while our review employed an interview format. We permitted the Inspectors General jointly to take sworn depositions of all the White House officials they wanted.

We requested copies of all the deposition transcripts from the Office of the Secretary. On July 23, Treasury provided us with the transcripts after all of the Inspectors General

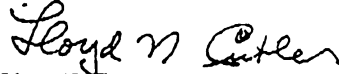
The Honorable Donald W. Riegler, Jr.  
August 3, 1994  
Page 2

depositions (except for Mr. Ludwig's) had been completed. On this basis we were able to obtain the information necessary for our review without interviewing most of the Treasury and RTC officials (we did interview Mr. Altman, Mr. Steiner, and Ms. Hanson's lawyers).

The arrangements for receiving transcripts were made through the Office of the Secretary. They could not possibly have interfered with the independence of the Inspectors General's investigation or the resulting findings of fact, since we did not receive the transcripts until after all depositions (except one) had been completed and they were preparing their final report. These transcripts were used by me and my staff to complete my review of these matters and prepare for my congressional testimony. We did not provide copies to anyone.

I respectfully submit that these arrangements were entirely proper and did not compromise the independence of either the Inspector General's review or ours. They were simply an efficient way of performing our respective tasks thoroughly within the brief time period available.

Sincerely,



Lloyd N. Cutler  
Special Counsel to the President

cc: Honorable Alfonse M. D'Amato, Ranking Minority Member  
All Members of the Committee





United States  
**Office of Government Ethics**  
 1201 New York Avenue, NW., Suite 500  
 Washington, DC 20005-3917

Tab 3

March 15, 1994

The Honorable Lloyd Bentsen  
 Secretary of the Treasury  
 Washington, DC 20220

Dear Mr. Secretary:

I want to apprise you of the steps the Office of Government Ethics (OGE) can take and those which OGE has already taken with regard to your letter dated March 3, 1994.

Unfortunately, some media reports have characterized your letter to OGE as a request for an OGE investigation. OGE is not an investigatory agency; OGE will not be investigating the activities of employees of your Department. OGE will, however, serve as a resource to those who can and who will ultimately conduct such an investigation. And, when that investigation is complete OGE will then, as you requested, be able to provide its views as to any ethics or conflicts issues that may be raised by the investigative reports.

Early last week, OGE staff met with the staff from the Office of the Independent Counsel Robert Fiske. At the meeting, my staff outlined OGE's role in the executive branch and discussed the steps that OGE might take in response to your letter. OGE agreed not to pursue any activities at this time that might jeopardize any investigation now being conducted by Mr. Fiske. OGE asked that the Office of the Independent Counsel notify us when an administrative investigation of employee conduct could proceed. This type of request follows the long-standing guidance of the Department of Justice with regard to administrative investigations of employee conduct during the pendency of a criminal investigation. We expect to receive a letter from Mr. Fiske or his office shortly which confirms this and will provide you with a copy.

In the meantime, my staff has asked for a meeting with the Office of the Inspector General (IG) at the Department of the Treasury. We believe that we can effectively work with the IG so that any information we believe relevant to issues of the application of the standards of conduct to employees of the Department can be developed and included in a report from the IG. We will then be happy to advise you based upon the results of that investigation. We understand that the IG has received a request from at least one member of Congress to investigate the matter which is the subject of your letter to OGE, and that the IG, like OGE, is acceding to a request from the Independent Counsel not to investigate the matter at this time. Therefore, our discussions with the IG will focus on

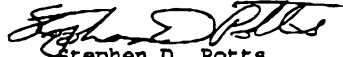
The Honorable Lloyd Bentsen  
Page 2

what actions our respective offices might take in the future, once the Independent Counsel has notified us that we may proceed.

In addition, because Mr. Altman was acting in his role as the Chief Executive Officer of the Resolution Trust Corporation (RTC), and because information must be obtained from that agency and its employees in order to address properly all of the issues, we will also meet with the Inspector General of the RTC. Our discussions with him also will focus on what actions our respective offices might take in the future, once we hear from the Independent Counsel.

If you or the Department receives a request for information with regard to OGE's activities or role, we would appreciate the Department's referring those requests to OGE. In the meantime, we will keep you informed of our activities. Please feel free to contact me if I can be of further assistance.

Sincerely,

  
Stephen D. Potts  
Director



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

Tab 4

June 30, 1994

Mr. John E. Ryan  
Deputy and Acting Chief Executive Officer  
Resolution Trust Corporation  
801 17th Street, N.W.  
Washington, D.C. 20434

Dear Mr. Ryan:

Today, Independent Counsel Robert Fiske announced that he has completed his investigation as it relates to contacts between White House and Treasury officials concerning the Resolution Trust Corporation's work with respect to Madison Guaranty Savings and Loan Association. As you may be aware, when the matters relating to such contacts came up, I asked the Office of Government Ethics to advise me of any ethics or conflicts issues raised by such contacts, and offered the assistance of Treasury staff in that endeavor. Treasury's Office of Inspector General has indicated to OGE that it would assist OGE by conducting fact-finding regarding the contacts. However, at Independent Counsel Fiske's request, Treasury's Inspector General and OGE independently agreed to defer their work in response to my request until Mr. Fiske notified them that their work would not interfere with Mr. Fiske's investigation.

Today, I asked both Treasury's Inspector General and OGE to proceed with their work, and I urged them to complete that work before the Congressional hearings into the contacts. I understand that Treasury's Inspector General has viewed the assistance of RTC's Inspector General as important in this effort because of the need to interview one or more officials at RTC and that Treasury's and RTC's IGs have discussed this need. I would very much appreciate it if you would ask RTC's Inspector General to work with Treasury's Inspector General in providing a timely and thorough review of the facts relating to the Treasury/White House contacts.

Thank you for your assistance in this important effort.

Sincerely,

A handwritten signature in cursive script that reads "Lloyd Bentsen".  
Lloyd Bentsen



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C.

SECRETARY OF THE TREASURY

Tab 5

June 30, 1994

MEMORANDUM FOR ROBERT P. CESCA  
DEPUTY INSPECTOR GENERAL

FROM: LLOYD BENTSEN

A handwritten signature in dark ink, appearing to read "L. Bentsen".

SUBJECT: *Investigation of White House-Treasury contacts  
concerning Madison Guaranty Savings and Loan  
Association*

Today, Independent Counsel Robert Fiske announced that he has completed his investigation as it relates to contacts between White House and Treasury officials concerning the Resolution Trust Corporation and its work with respect to Madison Guaranty Savings and Loan Association. It is my understanding that this removes any objection he previously raised to your providing assistance to the Director of the Office of Government Ethics in his review of these contacts. Accordingly, please begin your inquiry immediately. I would greatly appreciate it if you would take whatever actions are necessary to ensure that the Director receives your report in sufficient time to provide me with his views and advice prior to the Congressional committee hearings on this matter.

DLD

B-5.) Subpoena to Testify Before Grand Jury

# United States District Court for the District of Columbia

DISTRICT OF

TO:

Department of the Treasury  
c/o Edward S. Knight  
Executive Secretary of the Treasury

## SUBPOENA TO TESTIFY BEFORE GRAND JURY

SUBPOENA FOR:

☐ PERSON☒ DOCUMENT(S) OR OBJECT(S)

YOU ARE HEREBY COMMANDED to appear and testify before the Grand Jury of the United States District Court at the place, date, and time specified below.

<b>PLACE</b> United States District Court for the District of Columbia United States Courthouse Third and Constitution Avenue, N.W. Washington, DC 20001	<b>COURTROOM</b> Grand Jury 93-1 Third Floor  <b>DATE AND TIME</b> March 10 1994 10:00 a.m.
---	---

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):\*

See attached rider.

☐ Please see additional information on reverse.

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

U.S. MAGISTRATE Nancy M. [Signature] (87) DEPUTY CLERK	DATE 3/4/94
--	----------------

This subpoena is filed up in [Signature]  
of the United States District Court for the District of Columbia

NAME, ADDRESS AND PHONE NUMBER OF ASSISTANT U.S. ATTORNEY

Roderick C. Lankler  
Office of the Independent Counsel  
1001 Pennsylvania Avenue, N.W.  
Suite 490N, Washington, DC 20004  
(202) 544-2722

6884

SUBPOENA RIDER

A. Any and all documents and/or communications referring or relating to any contacts, meetings or conversations about or regarding Madison Guaranty Savings & Loan, its subsidiaries or affiliates, held between or among 1) any member of the White House staff or the staff of Hillary Rodham Clinton, including but not limited to Lisa Caputo, Mark Gearan, Harold Ickes, Bruce Lindsey, Bernard Nussbaum or Margaret Williams; and 2) any official or employee of the Department of the Treasury or the Resolution Trust Corporation, including but not limited to Roger Altman, Jack DeVore, Jean Hanson, or Josh Steiner. This includes, but is not limited to any documents and/or communications:

1. referring or relating to the arrangement, existence, substance or circumstances of any such meetings or conversations;
2. discussed or referred to in any such meetings or conversations;
3. exchanged between any member of the White House staff or the staff of Hillary Rodham Clinton, and any official or employee of the Department of the Treasury or the Resolution Trust Corporation at or in connection with any such meetings or conversations;
4. constituting notes taken at or referring to any such meetings or conversations;
5. summarizing, documenting or referring to all or any part of any such meetings or conversations.

B. Any and all documents and/or communications referring or relating to any criminal referrals made by the Resolution Trust Corporation about or regarding Madison Guaranty Savings & Loan, its subsidiaries or affiliates.

Definitions and Instructions1. Definitions

a. The term "document" or documents" as used in this subpoena means all records of any nature whatsoever within your possession, custody or control or the possession, custody or control of any agent, employee, representative, or other person acting or purporting to act for or on your behalf or in concert with you, including but not limited to memoranda, records, reports, notes, books, files, summaries or records of conversations, meetings or interviews, summaries or records of telephone conversations, diaries, calendars, datebooks, telegrams, facsimiles, telexes, telefaxes, electronic mail, computerized records stored in the form of magnetic or electronic coding on computer media or on media capable of being read by computer or with the aid of computer related equipment, including but not limited to floppy disks or diskettes, disks, diskettes, disk packs, fixed hard drives, removable hard disk cartridges, mainframe computers, Bernoulli boxes, optical disks, WORM disks,

magneto/optical disks, floptical disks, magnetic tape, tapes, laser disks, video cassettes, CD-ROMs and any other media capable of storing magnetic coding, microfilm, microfiche and other storage devices, voicemail recordings, and all other written, printed or recorded or photographic matter or sound reproductions, however produced or reproduced.

The term "document" or "documents" also includes any earlier, preliminary, preparatory or tentative version of all or part of a document, whether or not such draft was superseded by a later draft and whether or not the terms of the draft are the same as or different from the terms of the final document.

b. The term "communication" or "communications" is used herein in its broadest sense to encompass any transmission or exchange of information, ideas, facts, data, proposals, or any other matter, whether between individuals or between or among the members of a group, whether face-to-face, by telephone or by means of electronic or other medium.

c. "Possession, custody or control" means in your physical possession and/or if you have the right to secure or compel the production of the document or a copy from another person or entity having physical possession.

d. The term "referring or relating" to any given subject means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject including, but not limited to, documents concerning the preparation of other documents.

## 2. Instructions

a. If any original document cannot be produced in full, produce such document to the extent possible and indicate specifically the reason for your inability to produce the remainder.

b. Documents shall be produced as they are kept in the usual course of business, as organized in the files.

c. File folders, labels and indices identifying documents called for shall be produced intact with such documents. Documents attached to each other should not be separated.

d. The originals of all documents and communications must be produced, as well as copies within your possession, custody or control.

e. In reading this rider, the plural shall include the singular and the singular shall include the plural.

f. The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the request

inclusive rather than exclusive. The use of the word "including" shall be construed without limitation.

g. In the event that any document called for by this subpoena is withheld on the basis of any claim of privilege or similar claim, that document shall be identified in writing as follows: (a) author; (b) the position or title of the author; (c) addressee; (d) the position or title of the addressee; (e) any indicated or blind copies; (f) date; (g) a brief description of the subject matter of the document; (h) number of pages; (i) attachments or appendices; (j) all persons to whom the document, its contents, or any portion thereof, has been disclosed, distributed, shown or explained; and (k) present custodian. Each basis you contend justifies the withholding of the document shall also be specified. With respect to those documents or records as to which you may claim privilege, or attorneys' work product, set forth as to each such document the basis for such claim, the identity of each person who has been privy to such communication reflected in the document and whether you will submit the document to the Court for an in camera determination as to the validity of the claim.

i. In the event that any document called for by this subpoena has been lost, destroyed, deleted, altered, or otherwise disposed of, that document shall be identified in writing as follows: (a) author; (b) the position or title of the author; (c) addressee; (d) the position or title of the addressee; (e) indicated or blind copies; (f) date; (g) a brief description of the subject matter of the document; (h) number of pages; (i) attachments or appendices; (j) all persons to whom the document, its contents, or any portion thereof, had been disclosed, distributed, shown or explained; (k) the date of the loss, destruction, deletion, alteration or disposal and the circumstances thereof; (l) the reasons, if any, for the loss, destruction, deletion, alteration or disposal and the person or persons responsible.

j. If any information or data is withheld because such information or data is stored electronically, it is to be identified by the subject matter of the information or data and the place or places where such information is maintained.



DONALD W. RIEGLE, JR., MICHIGAN, CHAIRMAN  
 PAUL S. SARABANES, MARYLAND  
 CHRISTOPHER J. DODD, CONNECTICUT  
 JIM BASSER, TENNESSEE  
 RICHARD C. SHELBY, ALABAMA  
 JOHN F. KERRY, MASSACHUSETTS  
 RICHARD M. BRYAN, NEVADA  
 BARBARA BOXER, CALIFORNIA  
 BEN NIGHTHORSE CAMPBELL, COLORADO  
 CAROL MOSELEY-BRAUN, ILLINOIS  
 PATTY MURRAY, WASHINGTON  
 ALFONSE M. D'AMATO, NEW YORK  
 PHIL GRAMM, TEXAS  
 CHRISTOPHER S. BOND, MISSOURI  
 CONNIE HANCL, FLORIDA  
 LAUCH FAIRCLOTH, NORTH CAROLINA  
 ROBERT F. BENNETT, UTAH  
 WILLIAM V. Roth, JR., DELAWARE  
 PETE V. DOMENICI, NEW MEXICO

## United States Senate

COMMITTEE ON BANKING, HOUSING, AND  
 URBAN AFFAIRS

WASHINGTON, DC 20510-6075

STEVEN B. HARRIS, STAFF DIRECTOR AND CHIEF COUNSEL  
 HOWARD A. MENELL, REPUBLICAN STAFF DIRECTOR

June 22, 1994

The Honorable Lloyd Bentsen  
 Secretary of the Treasury  
 1500 Pennsylvania Avenue, N.W.  
 Washington, D.C. 20220

Dear Mr. Secretary:

On June 21, 1994, the Senate passed Senate Resolution 229, a copy of which is enclosed, directing the Committee on Banking, Housing, and Urban Affairs to conduct hearings on matters specified in the resolution. In preparation for the hearings, we are requesting present and former Treasury Department officials, as shown on the attached initial list, to produce records to the Committee.

As Secretary of the Treasury, you may have custody, control, or possession of records, including records of present and former Department of the Treasury personnel, which relate to the matters specified in the resolution and listed below. Our request embraces these and any other Department of the Treasury records relating to those matters.

Accordingly, please provide to the Committee all such records, regardless of format, that relate in any manner to the following subjects:

- (a) communications between officials of the White House and the Department of the Treasury or the Resolution Trust Corporation relating to the Whitewater Development Corporation and the Madison Guaranty Savings and Loan Association;
- (b) the Park Service Police investigation into the death of Vincent Foster; and
- (c) the way in which White House officials handled documents in the office of Vincent Foster at the time of his death.

To the extent that you or other Treasury officials have gathered documents from individuals and locations throughout the Department of the Treasury, please indicate where and from

The Honorable Lloyd Bentsen  
June 22, 1994  
Page Two

whom each of those records was obtained. It would also be helpful if you provided a list of the records that you are submitting so that the Committee and your office have a common list of the records supplied by the Department of the Treasury.

Additionally, we request that you provide to the Committee any written policies or descriptions of policies, in effect now or to your knowledge previously, concerning communications between the Department of the Treasury and other executive branch or independent entities, including the White House and the Resolution Trust Corporation.

The records should be delivered to Kelly Cordes, the Committee's Chief Clerk, 534 Dirksen Senate Office Building. As you know, Senate Resolution 229 provides that public hearings on this matter begin no later than July 29, 1994. Therefore, it is necessary that these documents be received by the Committee no later than July 1, 1994, and prior to that date, if possible.

If you have any questions concerning this request, please call Michael Davidson, Senate Legal Counsel, at 224-4435. This request is, of course, an initial request and may be supplemented by additional ones. We recognize that you may wish to designate a Treasury official who will be responsible for responding to this request.

Your cooperation in this matter is greatly appreciated.

Sincerely,



Alfonse M. D'Amato  
Ranking Member



Donald W. Riegle, Jr.  
Chairman

Enclosure



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220



Tab 6

JUN 27 1994

MEMORANDUM FOR JEAN E. HANSON  
GENERAL COUNSEL

FROM: ROBERT P. CESCA *Robert P. Cesca*  
DEPUTY INSPECTOR GENERAL

SUBJECT: Provision of Legal Advice and Services to OIG

As you know, the Inspector General has been requested to carry out an investigation into communications between Treasury employees and White House staff concerning the collapse of Madison Guaranty Savings and Loan, and related matters. It is important that the Office of Counsel to the Inspector General, headed by Francine Kerner, continue to provide independent legal advice and services during the course of the investigation.

Given the nature of the inquiry, we have therefore agreed that Ms. Kerner and members of her staff will report solely to the Inspector General on any matters relating to the investigation. Neither Ms. Kerner nor her staff will communicate any information about the substance of this inquiry without specific authorization from the Inspector General.

In addition, a separate job element, concerning the provision of legal advice and services in connection with this specific investigation, will be added to Ms. Kerner's performance standards for rating periods July 1, 1993 through June 30, 1994, and July 1, 1994 through June 30, 1995. The determination on relative job significance and job element performance for this job element will be at the sole discretion of the Inspector General. Moreover, we have agreed that the overall rating of Ms. Kerner's performance in each of these rating periods will need to receive the concurrence of the Inspector General.

By taking these steps, the agency will help allay any misperception that legal advice and services are being affected by people whose activities may be subject to review. Should you have any questions concerning this arrangement, please feel free to call me directly.

cc: Dennis I. Foreman  
Francine J. Kerner



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

Tab 7

July 1, 1994

The Honorable Alfonse M. D'Amato  
Ranking Member  
Committee on Banking, Housing,  
and Urban Affairs  
United States Senate  
Washington, DC 20510-6075

Dear Senator D'Amato:

As you and Chairman Riegle requested in your June 22, 1994 letter to Secretary Bentsen, we have produced for the Committee's Chief Clerk, copies of responsive records in the possession and control of the Department of the Treasury. We understand that the Committee requires these records in connection with its planned hearings pursuant to Senate Resolution 229. We also provided, as you requested, a list of the documents identified by number, indicating where and from whom each record was obtained. Except as noted below, this letter also responds on behalf of the current Treasury officials to whom you submitted requests.

Many of these records were obtained from individuals and offices within Treasury headquarters and its bureaus in connection with Independent Counsel Robert Fiske's recently concluded investigation. As the documents were received and reviewed for production to the Grand Jury and the Committee, each record was stamped with a control number which generally is located in the lower right hand corner of each document. As they were further reviewed, some documents were found to be nonresponsive to the Committee's request. For example, briefing books often contained information on a variety of subjects. Although each page of the briefing books was initially given a control number, only certain pages of the books are responsive to the Committee's requests. Other documents were found to have originated with the Resolution Trust Corporation ("RTC"). Those have been referred to the RTC for direct response to you. Other Treasury records were found to contain information obtained from the RTC. We have requested the RTC to advise us of their views about the information they had provided. The referral of these records to the RTC is in accordance with the normal procedures for comity between Executive Branch agencies (the "third agency rule"). For all of these reasons, you will see that there are gaps in the sequence of numbers on the enclosed documents.

You should also be aware that counsel for Roger Altman and Jean Hanson have provided to us the responsive documents in the possession and control of their clients and asked us to make productions on their behalf. Those documents have been included

in our production. We understand that counsel to Joshua Steiner will also be responding directly to you.

In addition, we redacted information of a personal nature and other information that is nonresponsive to your request from a limited number of documents, mostly calendar pages, handwritten notes and portions of memoranda addressing unrelated areas within the Department's responsibility.

In a number of instances, nonresponsive text contained in documents included in the production was redacted at the suggestion of the private counsel for the individually subpoenaed officials. As you may be aware, at the request of Independent Counsel Fiske, Treasury has not yet interviewed those Treasury officials who received grand jury subpoenas. This has prevented us from fully understanding the significance of certain documents and has required that we rely on information from the private counsel as to whether information in those documents is responsive to the Senate's document request. We ask that you permit us, with the assistance of private counsel, to show you unredacted copies of the documents produced with redactions. In that way, you can receive explanations of the basis for decisions that certain material is nonresponsive, and, in addition, explanations of why certain material that has not been redacted is responsive even though that responsiveness is not immediately apparent.

There also are a few pages that consist of sensitive or personal material or law enforcement information. We intend to provide those records under separate cover so that we can discuss further with the Committee's staff how this material should be handled.

We discussed today with Chief Counsel Bill Codinha and Michael Chertoff the arrangements the Committee has made to protect against improper disclosure of the documents Treasury produces. We understand that the Treasury production will be treated with the same precautions that the Committee uses for information classified as "Secret." We were advised that those precautions include storing all copies of the Treasury production in one or more safes in a secure reading room to which access is limited to Members and to Messrs. Codinha and Chertoff and their staffs. We also were advised that the reading room is at all times either locked or guarded by the Capitol Police. Finally, we were advised that the reading room contains no copying machines, and that, although there are computers in the room, computer diskettes may not be removed from the room.

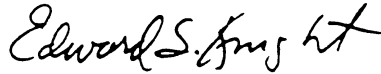
Lastly, we raised with Messrs. Codinha and Chertoff our concerns regarding the use of certain nonpublic or personal information during the course of the Committee's hearings. While we would appreciate notice of which documents would be used publicly and

an opportunity to discuss any disclosure concerns with the member, we were told that they were unable to agree to a specific procedure to address this concern. However, both Messrs. Codinha and Chertoff understood our concern and agreed to meet next week to discuss this matter further to see if a satisfactory procedure could be agreed upon. At that time, we will continue our discussions regarding deliberative process and work product materials.

If you have any questions about the process by which the records were collected and reviewed, please call me at 622-0027 or Robert M. McNamara, Jr., Assistant General Counsel, at 622-1913.

We appreciate the cooperation the Committee's staff has extended to us, and we will continue to fully cooperate with the Committee's inquiry.

Sincerely,

A handwritten signature in dark ink, reading "Edward S. Knight" with a stylized flourish at the end.

Edward S. Knight  
Executive Secretary and Senior  
Advisor to the Secretary

## CROWELL &amp; MORING

1001 PENNSYLVANIA AVENUE, N.W.

WASHINGTON, D.C. 20004-2595

(202) 624-2500

CABLE: CROWOR

FACSIMILE (RADIOCOM): 202-626-5118

W. U. I. (INTERNATIONAL) 84244

W. U. (DOMESTIC) 89-2448

October 7, 1994

SUITE 1200  
2010 MAIN STREET  
IRVINE, CALIFORNIA 92714-7217  
(714) 263-8400  
FACSIMILE (714) 263-8414  
DENNING HOUSE  
80 CHANCERY LANE  
LONDON WC2A 1ED  
44-71-413-0011  
FACSIMILE 44-71-413-0333

3049:smb  
99120.021

BY HAND

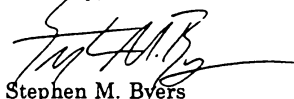
Ms. Kelly Cordes  
Chief Clerk  
Committee on Banking, Housing  
and Urban Affairs  
United States Senate  
534 Dirksen Senate Office Building  
Washington, D.C. 20510-6075

Dear Ms. Cordes:

Pursuant to Chairman Riegle's request, please find enclosed the response of Clifford M. Sloan to the post-hearing question posed to Mr. Sloan by Senator Bond.

If you have any questions, please contact the undersigned.

Sincerely,



Stephen M. Byers

Enclosure

Response of Clifford M. Sloan  
to Post-Hearing Question

October 7, 1994

QUESTION FROM SENATOR BOND

QUESTION:

Please provide a transcription of documents numbered X000983-X000986.

ANSWER:

*Transcription of X000983:*

9/30

- Altman's files
    - NYT 3/9/92 Altman thinks
  - piece of news
    - Bill Roulet --RTC
    - VP of KC RTC office -- office which forwarded 9 referrals -- phone Sue Schmidt -- W. Post vital info suppressed -- didn't mention anything specifically --
    - demanded unlisted #s for [or from] RTC investigators
      - 9 crim. referrals
    - belief -- crim. referrals to D.C.
- 
- apparently -- K.C. to D.C. --
    - D.C. to LR on Friday --
  - crim referral since last September --
  - referral last September -- Whitewater Co. --
    - re: Clinton principals
  - 9 referrals -- allegations re: Fulbright --
    - Jim Guy Tucker
    - attempt to divert funds
  - worst allegation -- consipr. to divert funds --



*Transcription of X000984:*9 new referrals

- conspiracy to divert funds for campaign contributions --

- MacDougall
- Peacock
- Clinton '85 campaign as co-conspirators

Clintons mentioned in other charges as potent. witnesses

*Transcription of X000985:*

10/7

showed up at home

- Sue Schmidt -- was out in K.C. -- ^ contacted investigator at home -- asked q's -- no answer

- Jeff Gerth working on it

---

1 Whitewater Develop -- International Paper Realty -- FU?

(10/86 -- IP sold piece of property) WW --> Great So.

2 Seth Ward = Webb father-in-law?

3 Knew 3 senior partners in Rose Law Firm mad at [or ran out]  
Joe \_\_\_ because he made more \$\$\$?

4 Vince Foster involved in any of this?

--> interviewed Jim McDougall day before

---

*Transcription of X000986:*

- Sue Schmidt -- Steve Coutzalton public affairs  
person -- RTC

RTC Early Bird - Wash. Post & AP  
pursuing Rose Firm's undisclosed  
link members of firm & funds to

- The Rose Law Firm's alleged undisclosed  
conflict of interest, and internal RTC  
sources suggests that multiple  
referrals to the Justice Dept, link  
the Firm's members

---

NO CONTEMPT



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

August 2, 1994

MEMORANDUM FOR EDWARD S. KNIGHT  
Executive Secretary and  
Senior Advisor to the Secretary

FROM: Neal C. Comstock *NCC*  
Deputy Executive Secretary for  
Policy Analysis

SUBJECT: Analysis of the Secretary's Activities During the  
Period of September 23, 1993 through March 21,  
1994.

In preparation for the Secretary's upcoming Congressional testimony on White House-Treasury contacts concerning Whitewater, I have gathered and analyzed information on the Secretary's activities from September 23, 1993 to March 21, 1994. All of the following information is for that period.

Statistical Breakdown of Specific Information

- o The Secretary had a total of 786 meetings<sup>1</sup> on 560 subjects including:
  - o 130 meetings at the White House;
  - o 51 meetings with Members of Congress including 32 meetings on Capitol Hill; and
  - o 11 appearances before Congress for testimony.
- o Types of Meetings
  - o The Secretary had 696 total scheduled<sup>2</sup> meetings.

---

<sup>1</sup> As used here, "meeting" refers to an event in which the Secretary participated, and of which a record appears on either the Secretary's final daily schedules or the handwritten logs of the Secretary's Executive Assistant.

<sup>2</sup> As used here, "scheduled" refers to events on the Secretary's final daily schedules. These schedules are prepared by the Scheduling Office.

- o The Secretary received 502 written briefings on 560 subjects to prepare for these scheduled meetings.
- o The Secretary gave 60 speeches.
- o The Secretary gave 80 interviews, including 25 press conferences.
- o The Secretary participated in 488 telephone calls including:
  - o 349 calls placed by the Secretary; and
  - o 139 calls received by the Secretary.
- o The Secretary responded to and signed 594 letters on 490 subjects.
- o The Secretary signed at least 683 action memoranda on 456 subjects.
- o The Secretary received 2414 memoranda on 2001 subjects.
- o The Secretary's travels included trips to:
  - o seven foreign countries;
  - o nine states; and
  - o 21 foreign and domestic cities.

Sources of Information Gathered and Analyzed

- o The Secretary's final daily schedules;
- o The Secretary's Executive Assistant's daily handwritten logs showing those who entered the Secretary's office for scheduled and unscheduled appointments, and showing telephone calls made to and by the Secretary;
- o The Secretary's final monthly block schedules;
- o The Secretary's daily briefing books;

- o The Secretary's Congressional testimony books;
- o The Secretary's foreign and domestic trip books; and
- o Executive Secretariat computer records.

#### How the Information was Gathered

- o Extensive search of Executive Secretariat files; and
- o Search of Executive Secretariat computer records.

#### How the Information was Analyzed

- o For the Secretary's meetings, categories were developed from the following materials, and these categories were used to gather the information presented above:

The Secretary's final daily schedules; the Secretary's Executive Assistant's handwritten logs; the Secretary's final monthly block schedules; the Secretary's daily briefing materials; the Secretary's Congressional testimony books; and the Secretary's foreign and domestic trip books.

In determining what constitutes a subject for this analysis, a written briefing on different aspects of the same issue, e.g. GATT, was regarded as concerning separate subjects.

- o For the Secretary's other written materials, computer records of letters the Secretary signed, memoranda the Secretary signed, and memoranda the Secretary received were analyzed. Executive Secretariat procedures require that all written materials for the Secretary be logged into the Executive Secretariat computer system.

Letters signed Computer records identified each of the 594 signed outgoing letters by an abstract description of the incoming letter and by the Treasury Department office to which the incoming letter was assigned.

The abstract for each letter was reviewed. By Treasury Department office, duplicate correspondence were searched for and eliminated. Since the Executive Secretariat assigns incoming letters by subject matter to Treasury Department offices for response, I believe

this approach identified virtually all duplicate correspondence. In making these determinations, correspondence concerning different aspects of the same issue, e.g. NAFTA, were regarded as separate subjects.

Action Memoranda Action memoranda for the Secretary are prepared for matters requiring policy decisions, his signature, or telephone calls.

Computer records identified 683 abstracts of action memoranda on which the Secretary made decisions. Within the computer records there were numerous entries on some issues that were so similar that they were counted as one subject. For example, 31 thank you letters to individuals who sent donations to reduce the national debt were counted as one subject for this tabulation.

Memoranda Computer records identified 2414 memoranda that were received by the Secretary. This number includes the 683 action memoranda and all of the briefing materials described above.

I believe this data presents as accurate a portrayal of the Secretary's activities as can be reasonably be depicted, given the sheer volume of paper regularly given to him. The information included here results from a good faith effort to locate, tabulate, and characterize every relevant document. The data necessarily reflects the judgment of those who worked on this project in characterizing each document.

The following people contributed significantly to, and were instrumental in the preparation of, this analysis: Sarah Fordney; Ken Thompson; Greg Patient; Ashley Lunkenheimer; La-Una Kennedy; Bernetta Davis; Norma Rodriguez; Beth Jones; Perry Bechky; and Fannie Gilyard.

Lloyd N. Cutler

WP

8-3-94

# A 'Heads-Up' History

*From Truman and Eisenhower to Watergate  
and Whitewater.*

In last week's House Banking Committee hearings on Whitewater, I testified that it was both customary and ethical for government agencies with law enforcement responsibilities to inform the White House whenever a criminal investigation is launched that involves high administration officials or the president himself. Others have challenged that conclusion.

As to the proposition that such a "heads-up" is customary, I cannot think of a case in which such an investigation was started without informing the president. President Truman was informed when various of his aides came under inquiry; so were Presidents Eisenhower, Kennedy and Johnson. And as the Halde-  
man diaries show, President Nixon was informed on a day-to-day basis as to the status of the FBI investigation of the Watergate break-in and how close it was getting to the White House itself.

What was wrong in the Watergate case was not the initial heads-up but the way Nixon improperly sought to follow the progress and influence the outcome of the inquiry. As a vow of "never again," the independent counsel law was enacted in 1977. Before it passed, Attorney General Griffin Bell began an investigation of whether the Carter family's peanut warehouse funds had been illegally diverted to his election campaign. Because of President Nixon's bad example, Judge Bell appointed his own independent counsel to pursue the inquiry. However, he informed the president of the investigation before the independent counsel was appointed. And when Judge Bell learned that President Carter was planning to make a trip abroad with a congressman the department was about to indict, Judge Bell set up a "sensitive case" file so that the president could receive a heads-up whenever a high official was involved.

Attorney General Benjamin Civiletti continued this practice after the independent counsel law was adopted. When he petitioned for the appointment of an independent counsel to look

into what turned out to be baseless allegations of cocaine-sniffing against President Carter's chief of staff, Hamilton Jordan, Civiletti informed the White House counsel shortly before the petition was filed. And when the Department of Justice began investigating whether Billy Carter had violated the Foreign Agents Registration Act, the attorney general informed the White House counsel of this fact.

When Attorney General Edwin Meese was conducting his initial inquiry into the Iran-contra affair and learned that Lt. Col. Oliver North claimed to be acting with the authority of the president, Meese informed President Reagan and White House Chief of Staff Donald Regan well before Meese petitioned for the appointment of a statutory independent counsel. And according to White House Counsel Boyden Gray, he usually received a heads-up when a high official of President Bush's administration came under criminal investigation. This longstanding practice has continued under President Clinton.

Of course, such a heads-up should be carefully treated and closely held. Obviously, the receipt of a heads-up does not entitle a president to seek to influence the outcome of an investigation or to ask for further details to be passed on to relatives or high officials who are the subjects of the inquiry. The independent counsel law was enacted to prevent this from happening, and it was reenacted before its five-year "sunset" date in 1982 and 1987. (Republican opposition blocked the 1992 renewal, and we were without an independent counsel law until President Clinton finally obtained its reenactment last June, again over strong Republican opposition.) As Richard Nixon learned, presidents pay a heavy political price for trying to influence the outcome of a criminal investigation involving themselves or other high administration officials, and they are most unlikely to repeat this mistake.

But the giving and receiving of a heads-up,

without any subsequent effort to influence the outcome, is an entirely different proposition. Usually when a high official is involved, and certainly when the president or a member of his family is involved, leaks are inevitable at a very early stage of the investigation. As its own officials have testified, the RTC has been particularly notorious for leaking news about its numerous criminal referrals. The president and his staff need to know enough not to be taken by surprise and to prepare comments and responses the moment a potentially scandalous news leak occurs.

The president is the heart and brain of the executive branch. Like a hospital patient undergoing tests, he is monitored by a host of journalists who watch his every move and bombard him with questions. An unanswered question can be a story in itself, especially when it contains a hint of possible scandal. Presidents simply cannot afford to be uninformed or taken off guard.

There is a natural concern that a heads-up to the president can make it possible for him to tilt the machine. But apart from the safeguards of the independent counsel law and the force of public opinion, there are really no other legally and politically practical solutions under our constitutional plan. It grants the president alone *all* of the executive power, including the power to investigate and enforce violations of the criminal laws. He appoints all the senior officers with law enforcement responsibility, including the attorney general and the chief executive of the RTC, and they serve at his pleasure. Whatever they may do, they do in the exercise of his executive power, not the legislative power of Congress or the judicial power of the courts.

Of course he must not be allowed to interfere in the use of that power against his colleagues or himself. But he is at least entitled to know enough to respond to scandalous leaks when they occur. To respond effectively is one of his official duties. For other government officers to inform him of what he needs to

to respond effectively is part of their own duties. As Judge Bell has said, it is not the job of the independent counsel to sandbag the president.

A heads-up in these circumstances is unethical and improper. This was the conclusion reached in the report of the bipartisan committee of the Senate Judiciary Committee that investigated the Billy Carter-Libya case. In the subcommittee's view, "it would not have been improper for the Attorney General to advise the President of significant information received by the Department of Justice about Billy Carter's activities promptly upon receipt and analysis of that information. [T]he President should receive significant information relevant to the exercise of his constitutional responsibilities with respect to law enforcement even if that information pertains to a member of his family."

In the case of the Treasury-to-White House heads-up about the Madison Guaranty criminal referrals, all the evidence shows the White House did not use it in any way to interfere with the RTC referrals or the ensuing Department of Justice investigation. The RTC's senior officers have testified that no one exerted any pressure on them. The criminal referrals were made; an independent counsel was appointed to investigate them; the statute of limitations applicable to RTC civil claims was extended; the president's political critic, Mr. Stephens, was retained to handle possible criminal claims, and he is still on the job. And based on the evidence furnished to it by the Treasury Inspector General, the nonpartisan Office of Government Ethics, still headed by an appointee of President Bush, has now formally ruled that when the Treasury gave a heads-up to the White House about Madison Guaranty, no ethical standard was violated.

---

*The writer is special counsel to President Clinton and also served as counsel to President Carter.*

WP: 8/3





# MEMORANDUM

Comptroller of the Currency  
Administrator of National Banks

Washington, DC 20219

**To:** EDWARD S. KNIGHT, EXECUTIVE SECRETARY

**From:** EUGENE A. LUDWIG, COMPTROLLER OF THE CURRENCY

**Date:** March 11, 1994

**Subject:** GRAND JURY SUBPOENA

As indicated in my March 10, 1994 memorandum to you, I have directed the OCC's Chief Counsel's Office to conduct a thorough review of all OCC records for any document or communication which may be responsive to the Grand Jury Subpoena to the Department of the Treasury from the Office of the Independent Counsel. The Chief Counsel's Office was already conducting a review pursuant to a request for information made by Senator Bond during the recent Senate Banking Committee hearings concerning the Administration's banking agency consolidation proposal. Senator Bond's inquiry was whether I or any member of my staff had discussed the consolidation proposal with any member of the White House staff and, if so, whether questions relating to Worthen Banking Corporation, Worthen Bank of Little Rock, Worthen Financial, Madison Guaranty Savings and Loan or Whitewater were ever raised. The Chief Counsel's Office review is now complete, and the information in this memorandum is based on that review and my own best recollection.

Enclosed are copies of my daily meeting schedules, my telephone logs, both incoming and outgoing, and a summary sheet indicating calls between myself and the White House staff, from February 1993 to the present. I am supplying these records of meetings and calls to be as fully responsive to the subpoena as possible.

Although I am certain that the Whitewater matter was mentioned in a number of meetings and calls referred to in these materials, to the best of my recollection it was mentioned only in passing or in generalities, except as described below. Similarly, Whitewater was mentioned in passing in a number of informal conversations and on social occasions in which I participated with various members of the White House staff which are not reflected in the enclosed official meeting schedules and telephone logs. The only occasions on which Whitewater was discussed other than in passing or in generalities are also discussed below. To the best of my knowledge, no information was exchanged by me or by the White House except a passing reference to public information.

- 2 -

I can only recollect two discussions in which the subject of Whitewater or Madison Guaranty was mentioned other than in passing. On the first occasion, during the Renaissance Weekend gathering that took place at Hilton Head, South Carolina over the most recent New Year holidays, the President asked me whether it would be permissible for me, as a lawyer knowledgeable about banking law, to provide advice and counsel on any of the legal/regulatory issues relative to the Whitewater matter. Beyond asking this question, the only information I recollect that he imparted to me was that he had done nothing wrong, and moreover had lost money in the transaction.

Prior to discussing the matter with the President, I sought the advice of the White House Counsel's Office and others regarding the permissibility of discussing Whitewater with the President. I spoke with Treasury General Counsel Jean Hanson and White House Counsel Bill Kennedy and Joel Klein. If my memory serves me correctly, I might have spoken with Joshua Steiner or others briefly, trying to track down Ms. Hanson or the White House since this was a holiday weekend. I told them that I was not certain whether to discuss the matter with the President, and knew very little about the matter or the White House response to it. Based on the advice I obtained, I determined that it would be impermissible for me to discuss the matter with the President or the First Lady. Accordingly, we did not discuss the matter.

The other occasion occurred on January 19, 1994, when I contacted Margaret Williams of the White House staff and offered my own unsolicited view that the White House should promptly provide full public disclosure of all materials associated with Whitewater, if that had not already been done. I also said that I thought they should devote one full-time lawyer and/or other full-time staff to the matter because of the great public visibility it was getting. Otherwise, we did not exchange any information.

As part of the Chief Counsel's Office review, we also interviewed other OCC staff members and had them review their meeting schedules and telephone logs. As a result of that review, a number of references to routine meetings and other contacts with various members of the White House or Treasury staffs have also been identified. Because none of my staff members can recall any substantive conversations about Whitewater with anyone from the White House or Treasury, I am not enclosing any of these schedules or logs.

The only other documents we have found that are responsive to the inquiry are the copies of FOIA requests from The Baltimore Sun and The Washington Post to the FDIC requesting documents concerning Madison Guaranty Savings and Loan. Both letters were sent to me as a courtesy by the FDIC, after I was assured that they were public documents. I forwarded these letters for information only to Messrs. Bruce Lindsey and David Dreyer at the White House and Messrs. Frank Newman and Joshua Steiner at the Treasury Department.

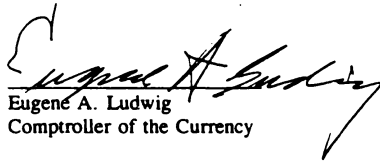
- 3 -

As you know, as Comptroller of the Currency I am an ex officio member of the board of directors of the FDIC. As part of his review, my Chief Counsel's Office has reviewed whether or not any matters or non-public information relating to Whitewater came before the FDIC board or were otherwise brought to my attention during my tenure, and has confirmed they did not. Likewise, as Comptroller of the Currency and FDIC board member I have no responsibility for any matters which may have come before the Office of Thrift Supervision or the Resolution Trust Corporation. To the best of our knowledge, there was no contact between me or any member of my staff on any Whitewater-related matters which may have been pending before those organizations.

As previously indicated, neither my staff nor I have destroyed or otherwise disposed of any document or communication which may be responsive to the subpoena since receiving your March 7 and 9, 1994 memoranda.

My staff and I understand that we have a continuing obligation to preserve any document or communication found or created which may be responsive to the subpoena, and we understand that we have a continuing obligation to inform you if any such document or communication is found or created. Accordingly, we will provide a copy of our response to Senator Bond's inquiry and any other document or communications which may be responsive to the subpoena, as soon as possible.

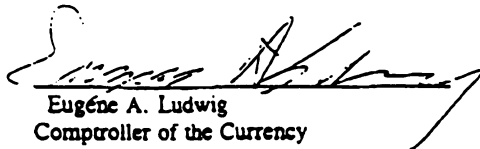
I would be pleased to provide any additional information I can concerning any of the above to the Office of the Independent Counsel. Please contact William P. Bowden, Jr. the OCC's Chief Counsel, if we may be of any further assistance.



Eugene A. Ludwig  
Comptroller of the Currency

Although I have not had occasion to address any issue concerning the so-called Whitewater matter up to the present and have no reason to believe that I will be involved in any such issue in the future. I have been informed that, in connection with the Senate hearings to confirm the nomination of Ms. Ricki Tigert as Chairperson of the Federal Deposit Insurance Corporation, Ms. Tigert has elected to recuse herself from participation in any such issue. In order to avoid even the possibility of the appearance of a conflict of interest or other impropriety, I have also decided to recuse myself from participating in any official investigation, inquiry, or determination which may come before me in my capacity as Comptroller of the Currency or Director of the Federal Deposit Insurance Corporation concerning matters or events involving the President or Mrs. Clinton in a personal capacity.

2/24/94  
Date

  
Eugène A. Ludwig  
Comptroller of the Currency

X001183



# MEMORANDUM

Comptroller of the Currency  
Administrator of National Banks

Washington, D.C. 20219

## FACSIMILE TRANSMISSION REQUEST

NO. OF PAGES: COVER + 3 DATE 12-2-93

### TO

NAME Bruce Lindsey COMPANY White House  
DEPT/MAIL STOP \_\_\_\_\_ CITY \_\_\_\_\_  
OFFICE PHONE 456-2668 FAX PHONE 456-2883

### FROM

NAME Eugene A. Ludwig PHONE 874-4900

OCC FAX: 202-874-4950

Additional addresses or other information:

CONTACT PERSON: Rita Johnson

PHONE NUMBER: 874-4900

SENDER, PLEASE CHOOSE ONE OF THE FOLLOWING:

- ☐ Return originals to contact person
- ☐ Will pick up originals
- ☐ Destroy originals

REV. 11-85

X001184



Washington Bureau  
1827 K Street NW  
Suite 1140  
Washington, DC 20006-17  
(202) 462-8250

November 30, 1993

Hoyle Robinson, Executive Secretary  
Federal Deposit Insurance Corp.  
350 17th St. NW 20429

Dear Mr. Robinson,

Pursuant to the federal Freedom of Information Act, I request access to and copies of ~~all~~ documents related to the now-defunct Madison Guaranty Savings and Loan of Arkansas including, but not limited to:

- the government's examinations of Madison between 1981 and 1986 and its reports;
- correspondence between regulators and lawyers at the Rose Law Firm of Little Rock, Ark., concerning Madison, and any memoranda to, from or about the Rose Law Firm and/or its partners;
- the FDIC's 1989 lawsuit against, and subsequent settlement with, Madison's accountants.

I agree to pay reasonable duplication fees for the processing of this request. However, please notify me prior to your incurring any expenses in excess of \$500.

Through this request, I am gathering information on Madison that is of current interest to the public because of current investigations into its dealings and its officers. This information is being sought on behalf of The Baltimore Sun.

As I am making this request as a journalist and this information is of timely value, I would appreciate your communicating with me by phone, rather than by mail, if you have questions regarding this request. I can be reached at (202) 416-8250, and look forward to your reply within 10 business days, as the statute requires. Thank you for your assistance.

Sincerely,

*Susan Baer*

Susan Baer  
Washington Correspondent

11/30 Ec W/R  
request is line  
to the category  
doc's listed.  
advised her the  
reports are every

the following

A Times M  
Newspaper

## The Washington Post

1100 15TH STREET, N.W.  
WASHINGTON, D. C. 20001  
(202) 334-6000

X001185

WOMAN'S DIRECT TELEPHONE NUMBER

334-6157

Jack Smite  
District General Counsel  
FDIC

Dear Mr. Smite

Pursuant to the Freedom of Information Act (5 U.S.C. 552 as amended), I hereby request disclosure of the following records for inspection and possible copying:

Any and all memos or other documents concerning the retention of the Rose law firm in the FDIC case against the accounting firm of Frost & Co., including a memo from Ken Schrock to John O'Donnell dated August 1989.

If you regard any of these records as exempt from required disclosure under the Act, I hereby request that you exercise your discretion to disclose them nevertheless.

I further request that you disclose the listed documents as they become available to you without waiting until all the documents have been assembled.

I am making this request on behalf of The Washington Post, a newspaper of general circulation in the Washington, D.C. metropolitan area and throughout the United States. The records disclosed pursuant to this request will be used in the preparation of news articles for dissemination to the public. Accordingly, I request that, pursuant to 5 U.S.C. 552 (a)(4)(A), you waive all fees in the public interest because the furnishing of the information sought by this request will primarily benefit the

.../2

X001186 Page 2

public. If, however, you decline to waive all fees, I am prepared to pay your normal search fees (and copying fees if I decide to copy any records), but I request that you notify me if you expect the search fees to exceed \$100.

I look forward to hearing from you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ann Coleman". The signature is written in dark ink and is positioned below the typed name "Ann Coleman".



## M E M O R A N D U M

TO: The First Lady C O N F I D E N T I A L  
FROM: Harold Ickes  
DATE: 1 March 1994  
RE: Resolution Trust Corporation

-----

Attached is a copy of W. Neil Eggleston's 28 February 1994 memorandum to me regarding certain issues involving the RTC and the Rose Law Firm ("Rose"). Attached to that memo are copies of the FDIC report, dated 17 February 1994, concerning possible conflicts of interest regarding Rose's representation of the FDIC against Madison Guaranty, and the RTC's 8 February 1994 report concerning the same subject.

It is my understanding that shortly after Roger Altman met with Bernie Nussbaum, me and others concerning the RTC statute of limitations, he received an opinion from an ethics officer of the Treasury Department that he, as the acting head of RTC, did not have to recuse himself from matters involving Rose/Madison Guaranty. I will confirm this situation.

Please let me know if you want to discuss the attached.

THE WHITE HOUSE  
WASHINGTON

(revised)

February 28, 1994

MEMORANDUM FOR HAROLD ICKES  
DEPUTY CHIEF OF STAFF

FROM: W. NEIL EGGLESTON  
ASSOCIATE COUNSEL TO THE PRESIDENT

RE: WHITEWATER--FDIC AND RTC ROSE LAW FIRM ISSUES

The recent release of the FDIC and RTC reports addressing the possible conflict of interest of the Rose law firm in its representation of Madison Guaranty raises a number of issues.

What did the FDIC and RTC conclude, and why does it seem that their conclusions are inconsistent?

1. The FDIC Report.

The FDIC report was released on or about February 17, 1994. It was drafted by the Legal Division of the FDIC, and presented to FDIC Acting Chairman Hove, a Republican.

Frost & Co. was Madison Guaranty's accounting firm in 1984 and 1985. In that capacity, it prepared certain audited financial reports for Madison. The Rose firm used the 1985 audited financial statement in connection with its representation of Madison Guaranty before the Arkansas Securities Commission.

Madison Guaranty sued Frost & Co. in 1988 for the negligent preparation of financial statements. At the time, Madison was represented by the Gerrish firm. McDougal had been forced out of the management of Madison in the summer of 1986. When the FDIC took over Madison Guaranty in February 1989, it determined that the Gerrish firm had a conflict. In March 1989, the FDIC therefore replaced the Gerrish firm with the Rose law firm.

The FDIC report reviewed the time period in which the FDIC was responsible for the conservatorship of Madison Guaranty, from February 28, 1989 to August 9, 1989 (when the RTC was created and took over the conservatorship of failed savings and loans). The FDIC was thus the entity that retained the Rose law

firm to pursue the Frost & Co. litigation. The FDIC report reviewed relevant FDIC and RTC documents and interviewed participants, including FDIC and RTC employees and Rose law firm lawyers.

On the factual issue of whether the Rose law firm had disclosed to the FDIC its prior representation of Madison Guaranty, the FDIC concluded that the record was unclear. The report nevertheless concluded that no conflict existed between the Rose law firm's prior representation of Madison Guaranty and its representation of the FDIC in the Frost & Co. litigation. The report concluded that the firm's representation in 1985 was not "directly adverse" to the representation in 1989.

The FDIC based its conclusion on two grounds. First, it stated that there was no evidence that the firm had any involvement in the creation of the Frost & Co. audit report that became the subject of the 1989 litigation. Second, it stated "we have found no evidence that the Firm had a close relationship with the S&L which might call into question its independence." This was one of the sentences that Senator D'Amato attacked so bitterly at the Senate Banking Committee hearing.

On the issue of whether Mr. Hubbell had disclosed his relationship with his father-in-law, Seth Ward, who was then in litigation with Madison Guaranty, the FDIC stated that it was uncertain whether Mr. Hubbell had disclosed the relationship before the FDIC retained the Rose law firm. Nevertheless, the relationship was plainly known to the FDIC within three months of retention. Mr. Hubbell agreed to the creation of an internal firm "firewall" to guard against him receiving information that might be of use to his father-in-law. At the hearing, Senator Faircloth ridiculed what he called an "Arkansas firewall" through which he claimed light and heat could easily penetrate.

At the hearing, Chairman Hove testified that in 1989, FDIC standards required an actual conflict before the agency would bar a retention. Today, the FDIC's standards are much tougher and would bar a retention on the showing of an "appearance of a conflict of interest." Chairman Hove testified that under today's standards, the Rose law firm facts would present an appearance of a conflict.

Chairman Hove agreed to have the FDIC Inspector General ("IG") look into the conflict issue. It was somewhat unclear at the hearing whether the IG would look only at the process by which the FDIC arrived at its decision or would review the substantive issue. It was also unclear whether the IG would apply the actual conflict standard or the appearance of a conflict standard in its review. We should assume, however, that

the IG will adopt the broadest possible interpretation of its mandate.

## 2. The RTC Report.

The RTC report was released on February 25, 1994 by Senator D'Amato.

The RTC report differs in two major respects from the FDIC report. First, the RTC did not interview any Rose law firm attorneys. The RTC reviewed RTC records and interviewed RTC employees only. Second, the report is factual only. The report reached no conclusion on whether the Rose law firm had a conflict. As the report describes its scope, "This investigation focused only on whether or not Rose disclosed its previous representation of Madison to the FDIC and RTC."

The RTC concluded that Rose did not disclose either its prior representation of Madison Guaranty or Mr. Hubbell's relationship with Mr. Ward.<sup>1</sup> The report acknowledges, however, that within a few months of the retention, the supervisory FDIC attorney, Ms. Breslaw, was made aware of Mr. Hubbell's relationship with Mr. Ward. Ms. Breslaw determined that no conflict existed.

The RTC did not hire the Rose law firm; rather, the retention by the FDIC took place before the RTC was even in existence. Further, the RTC acknowledges in its report that it had no outside conflicts committee, nor regulations, guidance or policy on conflicts until after 1989.

The conclusion of the RTC report is that the matter was referred to the Office of the General Counsel (Ellen Kulka) for any action that it deems appropriate.<sup>2</sup>

---

<sup>1</sup> An ultimate finding that Rose had not disclosed either the prior representation of Madison Guaranty or the Ward relationship would be a finding that Mr. Hubbell was not truthful in his recollection. Mr. Hubbell told the FDIC when it was preparing its report that he advised FDIC attorneys about the prior Rose representation of Madison Guaranty and believes that he also advised the government attorneys about his relationship with Mr. Ward. Mr. Hubbell was not interviewed by the RTC attorneys during the preparation of their report.

<sup>2</sup> As noted above, the RTC report only addressed the factual issues of representation and disclosure. The report did not attempt to apply the facts to any applicable conflicts rules or regulations. It is not clear what the RTC General Counsel, Ms. Kulka, will do with the report. The RTC has an Outside Counsels' (continued...)

At the hearing, Mr. Altman agreed to refer the RTC report to the RTC IG for review.

What sanction could be imposed if the FDIC/RTC finds that the Rose law firm had a conflict of interest or an appearance of a conflict in handling the Frost & Co. litigation in 1989 and failed to disclose that conflict?

As noted above, it is not clear whether the FDIC or the RTC will review this matter under an actual conflict standard or an appearance of a conflict standard. It would seem that to impose any sanction, the IG would have to decide that the Rose firm violated a duty that was in existence at the time, not a duty that later became more strict.

The most severe sanction that would likely flow from a finding that the Rose law firm had a duty to disclose its prior representation of Madison Guaranty and its relationship with Mr. Ward and that it breached that duty would be that the Rose law firm would be permanently barred from any further work for the RTC or the FDIC (and possibly other banking regulators). Lesser sanctions imposed by the regulatory agencies might also be possible, such as a temporary bar.

Under the facts as we now understand them, it would seem quite unlikely that the RTC could bring a civil action against the Rose firm or any of its attorneys for failure to disclose the conflict. To prevail, the RTC would have to show fraud or intentional misconduct that caused substantial loss to the institution or unjust enrichment to the Rose firm. The RTC could only really show fraud or intentional misconduct if it could demonstrate that the Rose law firm "threw" the Frost & Co. litigation because of its prior representation of Madison Guaranty.

Criminal liability for the Rose firm would seem even more remote. To prevail, the Special Counsel would have to show that Rose acted with intent to defraud the savings and loan or wilfully made false statements to the FDIC/RTC through its failure to disclose the conflict.

What civil matters is the RTC investigating, who can it sue, and why didn't we hear anything about a civil investigation until late 1993?

---

<sup>2</sup>(...continued)  
Conflicts Committee to which she could refer the report. She could presumably also refer the report with a recommendation to the RTC Acting CEO Jack Ryan for action.

The RTC is investigating whether it has a civil tort action against anyone who caused a loss to Madison Guaranty. This would include insiders such as James and Susan McDougal and members of the Board of Madison. It also includes professionals who provided service to Madison Guaranty, such as the Rose law firm, other law firms, and accounting firms. The Frost & Co. suit is an example of a suit against a professional service provider that caused loss to Madison Guaranty through a negligent audit. The RTC could also sue outsiders, including the President and Mrs. Clinton, if the RTC found that the outsiders worked with insiders illegally to divert assets of the savings and loan. For example, if the RTC believed that the Clinton campaign knowingly received diverted Madison assets at the April 1985 fundraiser or that the Clintons knowingly received other diverted Madison Guaranty assets through Whitewater, it could bring suit. The RTC commonly sues the recipient of a loan where it has information that the borrower knew that the loan was improper.

Under the legislation creating the RTC in 1989, the RTC as conservator of a failed savings and loan had to bring a tort claim within three years of the time the RTC (or FDIC as predecessor) took over the institution. The FDIC took over Madison Guaranty on February 28, 1989. Thus, all torts had to be brought by February 28, 1992. That day passed during the campaign.<sup>3</sup>

The Resolution Trust Corporation Completion Act, signed by the President on December 17, 1993, revived the possibility of a civil action. Under that legislation, a narrow class of torts--those that were fraudulent or involved intentional misconduct and that either caused substantial loss to the institution or unjust enrichment to the defendant--were revived. The statute extended the limitations period such that this category of tort could be brought within five years of the time the RTC took over the institution.<sup>4</sup> Moreover, the statute specifically provided that the five year period would apply even if the three year limitations period had already run.<sup>5</sup>

---

<sup>3</sup> I am unaware of any civil suits brought by the RTC prior to February 28, 1992, but I would not be surprised if it had sued McDougal and other insiders. McDougal was indicted in 1989 for bank fraud involving Madison Guaranty, and was acquitted in 1990. It would be fairly common for the RTC to pursue a civil action even after an acquittal.

<sup>4</sup> Torts based on negligence are still covered by the three year statute of limitations.

<sup>5</sup> The statute of limitations for crimes involving financial institutions is 10 years from the date the illegal conduct occurred, regardless of when the RTC took over the institution.

As a result, the RTC would not have been looking into a possible civil suit involving Madison Guaranty after February 1992 and before the passage of the statute last fall. In late 1993 and early 1994, Senator D'Amato and Rep. Leach recognized that the legislation had revived the possibility of an RTC lawsuit in the Madison matter. Both took to the floor of their respective chambers, aggressively urging the RTC to commence an action before the statute expired. In early 1994, the RTC--then faced with a statute of limitations that would run by the end of February--hired the San Francisco-based law firm of Pillsbury, Madison and Sutro to assist it in determining whether to bring any civil actions arising out of Madison.<sup>6</sup>

In February 1994, the statute of limitations was extended once again, through the life of the RTC, which is expected to expire on December 31, 1995.

Now that Mr. Altman as Acting CEO of the RTC has recused himself from further involvement in Madison Guaranty matters, who at the RTC will be the decision-maker on whether to bring a civil action arising out of the failure of Madison Guaranty?

Following his testimony before the Senate Banking Committee on Thursday, Mr. Altman recused himself as Acting CEO of the RTC from any further involvement in Madison Guaranty/Whitewater matters.

---

<sup>6</sup> The partner at Pillsbury assigned to this matter is Jay Stephens, a Republican who was a member of the Reagan and Bush administrations. From 1981 to April 1986, Mr. Stephens was a political appointee at the Justice Department. By 1986, he had become Associate Deputy Attorney General. From April 1986 through March 1988, he was Deputy Counsel to the President. In that capacity, he had a role in the Iran/Contra Affair. After published reports that Oliver North had shredded documents, Mr. Stephens called Fawn Hall. When she denied (falsely) that any improper shredding had taken place, Mr. Stephens accepted her denial, and the White House issued a statement denying the shredding.

In March 1988, President Reagan appointed Mr. Stephens to be U.S. Attorney for the District of Columbia. When President Clinton sought the removal of all U.S. Attorneys in April 1993, Mr. Stephens called a press conference at which he suggested that the President was acting to frustrate the investigation of Rep. Rostenkowski. At the time, Senator Dole called for hearings into what he termed the "March massacre." Until January 1994, Mr. Stephens had been considering running for the Senate.

The top official at the RTC who will be making these decisions on Madison Guaranty is Jack Ryan. Mr. Ryan was formerly with the Office of Thrift Supervision. He is a career official. His principal advisor will be Ellen Kulka, now General Counsel of the RTC, who also came from OTS. Ms. Kulka is also a career official.

We intend to nominate a person for the position of CEO of the RTC within the next few weeks. We can anticipate that any person the President nominates will be pressured to recuse from any Madison-related matters. If the person refuses to recuse and is confirmed, then that person will become the decision maker. If that person is forced to recuse to achieve confirmation, then Jack Ryan would remain the decision-maker on Madison matters at the RTC.

W.N.E.



**FDIC**Federal Deposit Insurance Corporation  
Washington DC 20429

General Counsel

February 17, 1994

MEMORANDUM TO: Chairman Hove  
FROM: Douglas H. Jones *Doug H. Jones*  
Acting General Counsel  
SUBJECT: Report on the Retention of the Rose Law Firm

As you requested, we have reviewed the FDIC's 1989 retention of the Rose Law Firm with respect to Madison Guaranty Savings and Loan. Attached is a report on our review and findings. As you can see from the report, we found no basis to conclude that the retention involved a conflict of interest by the law firm. Accordingly, we are not recommending any sanctions against the firm.



Attachment

THE WHITE HOUSE  
WASHINGTON

Y000001

February 22, 1993

## MEMORANDUM FOR WHITE HOUSE STAFF

FROM: BERNARD W. NUSSBAUM  
COUNSEL TO THE PRESIDENT   
  
STEPHEN R. NEUWIRTH   
ASSOCIATE COUNSEL TO THE PRESIDENT  
  
RE: Prohibited Contacts with Agencies

It is important that all members of the White House staff recognize that there are significant restrictions on the kinds of communications a member of the White House staff may have with independent regulatory agencies, Executive agencies, and their components. These restrictions apply with particular force where agencies have an adjudicative, investigative, enforcement, intelligence, or procurement function. Violations of these restrictions may result not only in significant embarrassment to the individual involved and the White House, but in legal sanctions against the individual as well.

The following discussion sets forth the restrictions applicable when staff are in contact with an agency. It is critical that you review this material carefully. If you have any questions, please consult the Counsel's office before making any contact with an agency.

A. Contact with regulatory, investigative, intelligence, and procurement agencies.

1. Regulatory Agencies: The cases that come before these agencies are of two general types: rulemaking and adjudicative. Both normally involve high stakes, are very complicated, and are extremely important to the parties concerned.

There is generally no justification for any White House involvement in particular adjudicative or rulemaking proceedings at any agency. Therefore, as a general rule, no member of the staff should contact (a) any agency in regard to any adjudicative matter pending before that agency, or (b) any independent agency in

- 2 -

Y000002

regard to any rulemaking pending before that agen  
For rulemaking proceedings at Executive agencies, staff member considering contacting any agency about such rulemaking should first consult with the Counsel's office. In all events, no such contacts with Executive agencies should be considered, nor will they be approved, if they imply preferential treatment or influence on the decision-making process.

Should you receive any inquiries with regard to pending regulatory or rulemaking matters, you should refer the inquiring party to the agency involved and express no opinion on the issues raised. White House staff members should avoid even the mere appearance of interest or influence.

Should an occasion arise in the course of your duties where it appears necessary to discuss general policy matters with the staff of an independent regulatory agency, you should first consult with the Counsel's office to determine whether such contact would be appropriate under the circumstances. Such clearance is not required before contacting Executive agencies on administrative, or purely executive or legislative, matters. But such clearance is required where any adjudicative, regulatory or procurement action is involved.

The following agencies, while not an exhaustive listing, are regarded by the Justice Department as independent and should not be contacted by White House staff (except for routine referrals of mail or administrative matters) without prior clearance from the Counsel's office:

- Commodity Futures Trading Commission
- Consumer Product Safety Commission
- Federal Communications Commission
- Federal Deposit Insurance Corporation
- Federal Election Commission
- Federal Maritime Commission
- Federal Reserve System
- Federal Trade Commission
- Interstate Commerce Commission
- National Credit Union Administration
- National Labor Relations Board
- National Transportation Safety Board
- Nuclear Regulatory Commission
- Occupational Safety and Health Review Commission
- Securities and Exchange Commission
- U.S. International Trade Commission

Y000003

- 3 -

The following agencies, or components of Executive departments or agencies, have significant regulatory or adjudicative functions. Accordingly, they should not be contacted with respect to the exercise of those functions without prior clearance from the Counsel's office (which clearance generally will not be given for adjudicative actions and will be considered only on a case-by-case basis for regulatory actions):

Environmental Protection Agency  
 Equal Employment Opportunity Commission  
 Federal Aviation Administration  
     (Transportation)  
 Federal Energy Regulatory Commission  
     (Energy)  
 Federal Labor Relations Authority  
 Food and Drug Administration  
     (HHS)  
 Foreign Claims Settlement Commission  
     (Justice)  
 Immigration and Naturalization Service  
     (Justice)  
 Merit Systems Protection Board  
 Mine Safety and Health Administration  
     (Labor)  
 National Highway Traffic Safety Administration  
     (Transportation)  
 Occupational Safety and Health Administration  
     (Labor)  
 Overseas Private Investment Corporation  
 Pension Benefit Guaranty Corporation  
 Social Security Administration  
     (HHS)  
 U.S. Parole Commission  
     (Justice)

This list is merely illustrative. Many bureaus and divisions of agencies have authority to issue binding regulations or to decide specific claims, and the same rules on prior clearance from the Counsel's office apply for those entities as well.

You should be aware that the President and Vice-President are presently considering certain changes to the regulatory review process, and further instruction on contacts with regulatory agencies may be forthcoming as those changes are adopted.

2. Investigative and Intelligence Agencies: As set forth in Part B of this section, the ban on agency contact extends to the litigating, investigative and

Y000004

- 4 -

adjudicatory divisions of the Department of Justice. The same rules also apply to the Internal Revenue Service, the Inspectors General, the Special Counsel of the Merit Systems Protection Board, and similar components of departments and agencies with authority to investigate charges of misconduct, to conduct audits of specific programs, or to bring complaints before courts or other adjudicative bodies.

White House staff should also confer with the Counsel's office before contacting agencies with respect to particular individuals. While the White House Office is not bound by the provisions of the Privacy Act of 1974, 5 U.S.C. Sec. 552a, Federal agencies are restricted by the Act from disclosing information about individuals contained in their files. The White House staff should be sensitive to these constraints.

Agencies in the intelligence community -- including the CIA, NSA, DIA, the Intelligence Division of the FBI, and the intelligence components of the military services -- report to the President through his Assistant for National Security Affairs. These agencies should not be contacted directly without coordinating first with the Assistant for National Security Affairs -- and, where issues of individual privacy arise, with the Counsel to the President.

3. Procurement Agencies: In recent years, the public has become increasingly sensitive to allegations of improper influence in the awarding of government contracts. No member of the White House staff should contact any procurement officer about a contract in which he or she has a personal financial interest or which a relative, friend, or business associate has a financial interest. This is true not only with respect to calls or contacts in which influence is directly exerted, but also as to so-called "status" calls or other communications which might direct the attention of the procurement officer to the fact that a White House staff member has an interest.

There may be occasions when the White House has a legitimate interest in information about procurement matters. In such instances, however, any communication should be made only by persons who have no direct interest themselves, and whose friends or associates have no such interests. It is advisable that the lack of such interest be made known to those receiving the communication so that unintended inferences do not arise. Moreover, to the extent possible, information

Y000005

- 3 -

about a procurement matter should be obtained after the contracting procedure is completed, or should be obtained from persons not involved in the decision-making process. To avoid the appearance of conflict and subsequent embarrassment, White House staff member who feel they must contact procurement agencies with regard to pending matters should first contact the Office of the Counsel to the President.

B. Communications with the Department of Justice

As we are all aware, it is imperative that there be public confidence in the effective and impartial administration of the laws. Political figures and others may seek White House intervention in pending criminal and civil matters, but it undermines the administration of justice if the White House even appears to be interfering in such cases.

The following procedures have been established for communications between the White House staff and the Department of Justice.

1. Any written or oral communication to the White House concerning particular pending Department of Justice investigations or criminal or civil cases must be directed immediately to the Counsel to the President. If appropriate and necessary, the inquiry will then be transmitted by the Counsel's office to the Office of the Attorney General or the Deputy Attorney General. No other member of the White House staff should discuss a pending criminal or civil matter with private individuals or organizations, or with the Department of Justice.
2. All requests for formal legal opinions from the Department of Justice must be directed to the Counsel to the President, who will in turn forward such requests to the Office of the Attorney General or to the Assistant Attorney General in charge of the Office of Legal Counsel.
3. Members of the the White House staff may communicate directly with the Department of Justice with respect to policy, legislation and budgeting matters.

C. Communications with the Department of the Treasury

In light of the sensitive nature of matters before some of the component agencies of the Department of the Treasury such as the Office of Comptroller of the Currency, the Internal Revenue Service, the Bureau of Alcohol, Tobacco

Y000006

- 6 -

Firearms, and the Secret Service -- the following procedures have been established for communications between the White House staff and the Treasury Department:

1. Any written or oral communication to the White House concerning pending investigations or cases must be directed to the Counsel to the President. If appropriate and necessary, the inquiry will then be transmitted to the Office of the Deputy Secretary of the Treasury.
2. All inquiries which concern or may concern rulings on pending applications, regulatory actions or adjudications must likewise be directed to the Counsel to the President for transmittal, if appropriate and necessary, to the Deputy Secretary (although it is unlikely that inquiries with respect to adjudications or to so-called "private" rulings will be considered appropriate or necessary).
3. Other than for routine "tax checks" in personnel matters, requests for tax return information generally will not be favored. All requests involving tax return information must be directed to the Counsel to the President. If the information is deemed essential and if permitted by the Internal Revenue Code, such requests will be forwarded to the Deputy Secretary of the Treasury (except for routine "tax checks", which will be processed under our existing procedures).
4. Requests for information or statistical data of a routine nature and comments regarding policy, legislation and budgeting may continue to be handled directly by White House staff and appropriate Treasury officials.

D. Procedures Governing Presidential Review of International Aviation Decisions

Executive Order 12547 (February 6, 1986) sets out procedure for Presidential review of international aviation decisions pursuant to Section 801 of the Federal Aviation Act, 49 U.S.C. Sec. 1461. Section 5 of the Executive Order prohibits individuals within the Executive Office of the President from discussing Section 801 cases -- those involving international aviation -- with outside parties and requires such individuals to refer written communications on Section 801 cases from outside parties to the appropriate office outside the Executive Office of the President. White House staff members should refuse to discuss with interested private parties cases subject to

Y000007

- 7 -

President's approval under Section 801, and should refer any written communications concerning such cases to the Counsel's office for appropriate referral.

Purely domestic aviation decisions not subject to Presidential approval under Section 801 would typically be governed by the general policy against White House involvement in particular adjudicative matters. You should consult with the Counsel's office before discussing such cases with interested private parties or Government agencies.

\* \* \*

The matters covered in this memorandum are intended only to improve the internal management of the Executive Branch and are not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

Please cooperate in observing the guidelines discussed above. If you have any questions regarding these procedures, please contact the Counsel's office.





THE WHITE HOUSE  
WASHINGTON

Y000008

March 9, 1993

## MEMORANDUM FOR ALL WHITE HOUSE STAFF

FROM: BERNARD W. NUSSBAUM  
COUNSEL TO THE PRESIDENT   
  
STEPHEN R. NEUWIRTH   
ASSOCIATE COUNSEL TO THE PRESIDENT  
  
RE: Prohibited Contacts with Agencies:  
Follow-up Memorandum

As discussed in our memorandum of February 22, 1993 (copy attached), it is important that all members of the White House staff recognize that there are significant restrictions on the kinds of communications a member of the White House staff may have with independent regulatory agencies, executive branch agencies and their components. It is also important that senior members of the White House staff ensure compliance with these restrictions within their offices.

This memorandum is intended to clarify certain issues discussed in our February 22 memorandum. The following points are intended to supplement, not replace, our February 22 memorandum, and the February 22 memorandum should continue to be consulted for the broader range of topics it covers.

The rules discussed below and in our original memorandum are intended to provide guidance in the absence of any other formalized process for White House input in regulatory matters. As noted in our February 22 memorandum, the President and Vice-President are presently considering certain changes to the regulatory review process, and further instructions on contacts with regulatory agencies may be forthcoming as those changes are adopted. Moreover, these rules do not overturn the existing Executive Orders that provide mechanisms for regulator review (particularly defining the role of the Office of Management and Budget). The procedures set forth in those orders can continue to be followed.

1. As a general rule, no member of the White House staff should contact any independent agency (or its components) with respect to any pending adjudicative or investigative matter.

Y000009

It may be appropriate in certain circumstances for White House staff to discuss rulemaking matters with an independent agency; but prior to doing so, White House staff members must first consult with the Counsel's office. White House staff members should also consult with the Counsel's office before discussing general policy matters, or administrative or legislative issues, with an independent agency. Such consultation with the Counsel's office can address broad areas of ongoing discussion. (A list of independent agencies is set forth on page 2 of our February 22 memorandum.)

2. If an independent agency contacts a member of the White House staff for information, it is normally appropriate for the White House staff member to respond to such an inquiry. It is important, however, that no such discussions occur if (a) the White House staff member (or a relative, friend or business associate) has a personal interest in the matter at issue; (b) the inquiry relates to a particular rulemaking matter and the White House staff member is aware the private parties have been lobbying the White House with respect to that matter; (c) the inquiry relates to a particular adjudicative or investigative matter. Furthermore, in responding to such inquiries, it is important that White House staff members respond only to the specific inquiry, and not have discussions that would otherwise be prohibited without prior Counsel's office approval.

3. As a general rule, no member of the White House staff should contact any executive branch agency (or its components) with respect to any pending adjudicative or investigative matter. In some circumstances, it may be appropriate for White House staff to have discussions with executive branch agencies concerning rulemaking; but prior to doing so, White House staff members should first consult with Counsel's office. The purpose of such consultation is to ensure that no private parties are receiving preferential treatment, having undue influence upon, the rulemaking process. (A list of executive branch agencies with significant regulatory or adjudicative functions is set forth on page 3 of our February memorandum.)

4. As a general rule, no clearance is necessary before a member of the White House staff contacts an executive branch agency to discuss general policy matters or administrative, executive or legislative issues. Keep in mind, however, that such discussions become inappropriate when (a) White House staff member (or a relative, friend or business associate) has a personal financial interest in the matter being discussed or (b) the White House staff member is, or appears to be, acting on behalf of a private party that has a financial interest in the matter being discussed.

Y000010

5. White House staff should confer with the Counsel's office before contacting independent or executive agencies with respect to particular individuals. Moreover, White House staff should be sensitive to the constraints placed on agencies by the provisions of the Privacy Act of 1974.

6. Agencies in the intelligence community should not be contacted directly without first coordinating any such contacts with the Assistant to the President for National Security Affairs. Where issues of individual privacy arise, the Counsel to the President should also be contacted.

7. No member of the White House staff should contact any procurement officer about a contract in which that staff member has a personal financial interest or in which a relative, friend or business associate has a financial interest. Moreover, if contacts are made in circumstances where no such financial interests are present, (a) such contacts should, to the extent possible, be made after the contracting procedure is completed and (b) the lack of such financial interest should be made known to those receiving the communication so that unintended inferences do not arise. To avoid even the appearance of impropriety in procurement, the Counsel's office should be consulted prior to any White House staff contacts on procurement matters.

8. Special rules apply to contacts by White House staff with the Department of Justice and with the Department of the Treasury. Those rules are set forth on pages 5 and 6 of our February 22 memorandum. Note that members of the White House staff may communicate directly with either Department with respect to policy, legislative or budgetary matters.

9. The rules governing contacts with agencies apply fully to matters concerning airlines and the airline industry. Private parties attempting to solicit White House support on domestic airline regulatory matters should generally be referred to the agency with rulemaking or regulatory authority. In addition, White House staff members must always refuse to discuss with interested private parties cases subject to the President's approval under Section 801 of the Federal Aviation Act (concerning Presidential review of international aviation decisions). The Counsel's office should be consulted before a member of the White House staff has discussions with parties interested in pending regulatory matters affecting an airline.

Y0000711

THE WHITE HOUSE  
WASHINGTON

May 4, 1993

MEMORANDUM FOR ALL WHITE HOUSE STAFF

FROM:               BERNARD W. NUSSBAUM  
                    Counsel to the President

                    STEPHEN R. NEUWIRTH  
                    Associate Counsel to the President

RE:                 Prohibited Contacts with Agencies

---

By memoranda dated February 22 and March 8, 1993, we set forth the policies governing communications by members of the White House staff with independent regulatory agencies, executive branch agencies and their components. In those memoranda, we explained that certain communications are prohibited without prior approval from the White House Counsel's office (e.g., communications with the Department of Justice concerning pending criminal or civil cases and investigations, and communications with other agencies concerning other adjudicative, investigative or rulemaking matters).

Our memoranda also noted that the President and Vice President are considering certain changes to the regulatory review process, and that further guidance will be forthcoming with respect to communications with agencies concerning pending regulatory and rulemaking matters. (Many such communications on regulatory and rulemaking matters are prohibited under the policies currently in effect, as set forth in our memoranda.)

The regulatory review project -- which is being coordinated by Jack Quinn, Counsel to Vice President Gore, in close cooperation with Sally Katzen, the Administrator-designate of OIRA -- should be completed during the next six to eight weeks. In the interim, and in order to ensure that the various offices within the White House do not send conflicting messages to any agency or department, all communications with agencies on specific regulatory and rulemaking matters should be discussed in advance with Jack Quinn. (Once Sally Katzen is confirmed by the Senate, all such communications should be discussed with her.)

All other communications requiring clearance from the Counsel's Office -- i.e., communications concerning pending adjudicative and investigative matters, as well as matters involving international aviation -- should continue to be clear with us.

Y000012

At the same time, we reiterate the guidance in our prior memoranda that members of the White House staff may communicate directly with agencies or departments with respect to policy, legislation or budgeting matters. Such communications are appropriate if they do not address particular pending adjudicative, investigative or rulemaking matters.

Thank you for your continuing assistance and cooperation in this area.

THE WHITE HOUSE  
WASHINGTON

Y000013

July 2, 1993

fns

## MEMORANDUM FOR WHITE HOUSE STAFF

FROM: BERNARD W. NUSSBAUM  
COUNSEL TO THE PRESIDENT

CLIFFORD M. SLOAN  
ASSOCIATE COUNSEL TO THE PRESIDENT

RE: Policy Regarding Investigations and Investigatory Agencies

In prior memoranda of February 22, 1993 and March 9, 1993, we set forth policies governing communications between members of the White House staff and independent regulatory agencies, executive branch agencies, and their components. This memorandum is intended to supplement our prior memoranda and to explain White House policy regarding investigations and investigatory agencies.

**(1) CONTACTS WITH INVESTIGATORY AGENCIES**

White House contacts with investigatory agencies may arise in three circumstances: (1) contacts regarding the initiation of an investigation, (2) contacts regarding a pending investigation or case, and (3) contacts regarding administrative matters.

**a. The FBI**

White House staff may have knowledge of a possible violation of law or wrongful activities involving White House facilities or personnel. Such information should be communicated to the Counsel to the President. If Counsel determines that contact with the FBI is warranted, Counsel will initially contact the Attorney General, the Deputy Attorney General, or the Associate Attorney General. If continuing contact is required, Counsel and the senior Justice Department official with whom Counsel is dealing will design and monitor the continuing contact.

As stated in prior memoranda, with respect to pending investigations or cases, any written or oral communications should be directed to the Counsel to the President. If appropriate and necessary, Counsel will contact the Attorney General, the Deputy Attorney General, or the Associate Attorney

Y000014

General. Here too, if continuing contact is required, Counsel and the senior Justice Department official with whom the Office is dealing will design and monitor that continuing contact.

Finally, with respect to contacts regarding administrative matters, White House personnel may have a need to communicate with Justice Department and FBI personnel on a variety of issues. These issues include policy, legislation, budgeting, and appointments. Members of the White House staff may deal with the appropriate persons in Justice and the FBI on such matters, just as with other Departments and agencies. The Counsel to the President has a need to communicate with FBI personnel about background investigations and clearances of government officials, and may communicate directly with appropriate FBI officials for that purpose.

**b. IRS**

It is never appropriate for White House personnel to initiate an investigation or audit by directly contacting the Internal Revenue Service. To the extent that White House officials believe that they have information regarding criminal tax violations by federal employees, that information should be communicated to the Counsel to the President. If appropriate and necessary, Counsel will communicate that information to the Attorney General.

As stated in prior memoranda, with respect to pending Treasury or IRS investigations or cases, a policy similar to the policy regarding the FBI is followed. White House personnel should refer any written or oral communications about a pending investigation or case to the Counsel to the President. If appropriate and necessary, Counsel will communicate with the Deputy Secretary of Treasury. If continuing contact is required on particular matters, it will be left to Counsel and the Deputy Secretary of Treasury to design and monitor that continuing contact.

Finally, with respect to contacts regarding administrative matters, White House personnel have a need to communicate with Treasury and IRS personnel on issues such as policy, legislation, budgeting, and appointments. White House personnel may deal with the appropriate persons in Treasury and IRS about such matters, just as with other Departments and agencies. The Counsel to the President also has a need to communicate with IRS personnel about routine "tax checks" of prospective government officials, and may communicate directly with appropriate IRS officials for that purpose.

Y000015

(2) WHITE HOUSE PRESS OFFICE DISCLOSURE OF ONGOING INVESTIGATIONS

The White House Press Office generally should not disclose ongoing investigations. In extraordinary circumstances, it is possible that a disclosure would be determined to serve the public interest. Even in such extraordinary circumstances, Press Office disclosure should be made only with the approval of (1) the Counsel to the President and (2) the Chief of Staff or Deputy Chief of Staff. Such disclosure should be made, moreover, if possible, only after consultation between the Counsel to the President and senior officials of the investigative entity's Department.

(3) PRESS OFFICE CONTACT WITH FBI

The White House Press Office responds to inquiries and provides information. A routine administrative function of the Office is consultation with spokespersons for Departments and agencies regarding public statements and publicly available information. Nevertheless, it is essential to avoid any possible appearance of interference with the FBI. Accordingly, in the future, if the Press Office desires to communicate with FBI spokespersons concerning public statements about a pending case or investigation, the Press Office should contact the Counsel to the President. If the communication is appropriate, Counsel will notify the Attorney General, the Deputy Attorney General, or the Associate Attorney General before it takes place. If continuing contact is required, Counsel and the senior Justice Department official with whom Counsel is dealing will design and monitor the continuing contact.



# HEARINGS RELATING TO MADISON GUARANTY S&L AND THE WHITEWATER DEVELOPMENT CORPORATION—WASHINGTON, DC PHASE

---

THURSDAY, AUGUST 4, 1994

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
*Washington, DC.*

The Committee met at 9:12 a.m., in room 106 of the Dirksen Senate Office Building, Senator Donald W. Riegle, Jr. (Chairman of the Committee) presiding.

## OPENING STATEMENT OF CHAIRMAN RIEGLE

The CHAIRMAN. The Committee will come to order. Let me welcome all those in attendance this morning, and invite those in the room to find seats so that we can begin.

Let me indicate that we are starting today our fifth day of hearings being conducted here by the Senate Committee on Banking, Housing, and Urban Affairs on the so-called Madison Guaranty Whitewater matter which was authorized, and instruction to do this provided to us, by Senate Resolution 229.

There are three panels that are scheduled to appear before us today. All of the witnesses testifying today are current or former White House personnel.

The first panel, now seated before us, and that we will hear from soon, consists of Thomas "Mack" McLarty, who is the Senior Advisor to the President and the former Chief of Staff to the President.

Also Margaret Williams, Chief of Staff to the First Lady of the United States.

The second panel consists of Harold Ickes, who is the Deputy Chief of Staff to the President.

Mr. George Stephanopoulos who is a Senior Advisor to the President.

Mr. John Podesta, who is Assistant to the President and Staff Secretary.

And then finally, in that panel, Mr. Bruce Lindsey, who serves as Assistant to the President and Senior Advisor.

The third panel will consist of Bernard Nussbaum, who served as the former Counsel to the President of the United States.

I should say, by the way, that the White House has been very cooperative in making witnesses available to us, and we appreciate that.

As with our prior hearings, we are looking forward to listening to our witnesses, so that they can help fill out all the information that we need to have regarding events relating to whether or not there was any improper conduct that may have occurred regarding communications between officials of the White House and the Department of the Treasury or the Resolution Trust Corporation relating to the Madison Guaranty issue and related matters.

So let me now, having introduced our two witnesses that are here this morning, ask you, if you would please, to stand and raise your right hand while I administer the oath.

[Witnesses sworn.]

Very good. Thank you.

I believe you both have opening statements that you wish to make, and Mr. McLarty, we will start with you, and we would like your statement at this time.

Senator BRYAN. Mr. Chairman, if those opening statements are available to the rest of the Committee, may we have them distributed?

Thank you.

[Pause.]

The CHAIRMAN. Let me just say, Senator Bryan, and I appreciate your request, and the statements, we are getting them, but we are getting them, because of the pressure of time, pretty much just before witnesses appear, but it is very important that Members have them available for reference.

Mr. McLarty.

**TESTIMONY OF THOMAS F. McLARTY, III, COUNSELOR TO THE PRESIDENT, FORMER CHIEF OF STAFF TO THE PRESIDENT, WASHINGTON, DC**

Mr. McLARTY. Mr. Chairman, Senator D'Amato, and other Members of the Committee, my name is Mack McLarty, and I currently serve as Counselor to the President.

As you know, it was my privilege to serve as the President's Chief of Staff from the time of his inauguration until June 17th of this year.

I testified before the House Committee on Banking, Finance and Urban Affairs, and I provided a written statement to that Committee.

And, Mr. Chairman, as you have already discussed, I have requested that I be permitted to attach that statement to this one.

I would like to simply summarize that testimony here so that we can move promptly to your questions.

Let me say at the outset that the White House very much respects the role of this Committee and its oversight responsibilities.

As you know, the President instructed all White House personnel to cooperate fully with your inquiry and to appear voluntarily when asked to do so.

As you also are aware, a number of independent authorities have reviewed the contacts between the Treasury and the White House concerning the Madison matter. The Special Counsel, the Grand Jury, the Office of Government Ethics and the White House Counsel.

And they have all determined that the contacts violated no laws.

The Office of Government Ethics and the White House Counsel, Mr. Cutler, examined the contacts in light of ethical standards, which of course are tougher than legal ones.

I specifically asked Mr. Cutler to do that and to do so in hindsight. Both he and the Office of Government Ethics concluded that no one acted unethically.

Even if I am repeating the obvious, I want to make certain that Congress and the American people understand a very critical point.

No one attempted to influence the RTC's decisionmaking. No one attempted to influence the RTC's decision on whether or when to bring claims against individuals in connection with the failure of Madison.

As we apply hindsight to these events, however, it is obvious to all of us that some of the contacts were unwise.

The White House has already implemented Mr. Cutler's suggestions, and they will assure in the future that all contacts with regulatory agencies about on-going reviews and investigations will be approved by or, even better, limited to White House Counsel.

I would like to emphasize, as I did before the House Committee, the importance of keeping the Madison Whitewater matter in perspective with some backdrop.

The period the Committee is reviewing extends roughly from the end of September to the beginning of March. And during that period, the White House was extraordinarily busy and very productive, even though some time, of some White House personnel, was spent responding to various Whitewater inquiries and controversies.

Specifically, we concluded the North American Free Trade Agreement and lifted the sanctions against South Africa. We reinstituted the Super 301 Trade Powers. We obtained a GATT agreement which, as all of you know on this Committee, had been outstanding for a number of years, and the President convened the APEC conference in Seattle and brought our G-7 allies to Detroit for a major conference on jobs.

At the same time, the President was traveling to Europe, bringing his leadership to NATO and outlining his partnership for peace initiative, and holding major talks with President Yeltsin and other Russian leaders.

On the heels of last year's economic legislation, which was critical to getting our fiscal household in better order, we set out to improve the social fabric of our country.

Working closely with the Members of Congress, we enacted major educational reform, including Goals 2000.

As all of you know, the President introduced major health and welfare reform legislation that our country so badly needs, and after getting the Brady Bill passed, we are on the threshold of passing a sweeping and a meaningful crime bill.

And our 1995 budget and related appropriations bills are moving forward in an orderly and a timely manner.

I also want to emphasize, and to say very sincerely, that the people who work in the White House are some of the finest people that I have ever known. They are dedicated public servants and represent our Nation's very best, as they should.

It was a privilege for me to be their Chief of Staff and it continues to be a privilege for me to work with them on a daily basis.

If there were errors, they were made in good faith. None of us are perfect and none of us ought to assert that we are.

And I am confident that this Committee, like the Special Counsel, the Office of Government Ethics, and the White House Counsel will conclude that no one did anything wrong, that we served our President and our country well, and that now it is time for us to get back to work.

Mr. Chairman, thank you very much.

The CHAIRMAN. Thank you, Mr. McLarty.

Ms. Williams, we would like your statement now please.

**TESTIMONY OF MARGARET A. WILLIAMS, ASSISTANT TO THE PRESIDENT AND CHIEF OF STAFF TO THE FIRST LADY, WASHINGTON, DC**

Ms. WILLIAMS. I am Margaret Ann Williams, Assistant to the President and Chief of Staff to the First Lady.

I am grateful to Chairman Riegle and the Members of the Senate Banking Committee for the opportunity to address you concerning my very limited contact with the Treasury Department in connection with the work of the Resolution Trust Corporation.

That contact was confined to a meeting on February 2nd of this year, and an encounter with Deputy Treasury Secretary Roger Altman several days later.

But prior to my testimony, I think the Committee might find it useful to know a little about my professional background and my duties and responsibilities as Assistant to the President and Chief of Staff to the First Lady.

My appointment to President Clinton's staff came after a brief stint with the Clinton-Gore campaign, where I served as Mrs. Clinton's communications director.

I joined the staff of the Children's Defense Fund in 1985, as a senior media analyst responsible for developing and overseeing an advertising campaign on teen pregnancy prevention.

In 1988, I became CDS director of media affairs and served on CDS's six member management committee.

Prior to CDS, I worked for the Center on Budget and Policy Priorities, developing a media relations program for that organization.

I have served as a campaign press secretary and a national and congressional campaign secretary and held a number of media-related jobs.

I hold a master's degree from the Annenberg School of Communications at the University of Pennsylvania.

As one of seventeen Assistants to the President, I participate, as directed by the Chief of Staff to the President, in management issues and communications meetings and work groups. As Chief of Staff to the First Lady, I manage, direct, and advise a staff of thirteen who support the activities of the First Lady.

Those areas include policy, press relations, White House events and social activities, scheduling and correspondence.

Because of Mrs. Clinton's involvement in Health Care policy, I spend a good deal of time facilitating selective Health Care admin-

istrative and policy issues across White House departments and the Cabinet.

Late last year, the number of Whitewater press inquiries began to increase and my staff was required to spend more and more time answering these questions.

Let me make it clear that I was not involved in the legal representation of the President or Mrs. Clinton. My activities with regard to Whitewater generally involved addressing management and information concerns related to overwhelming media interest in the matter.

I made a conscious decision that I and other members of the First Lady's staff would not use our time with her discussing Whitewater unless we were trying to obtain facts to answer press inquiries, facts which could not be found elsewhere.

I believed that our priority, and it was my job to keep us focused on our priority, was health care, and that we could keep our focus and help Mrs. Clinton to keep her focus by using the time we had with her on health care and on her many official and social obligations.

Let me now address my involvement in the meeting of February 2, 1994.

The meeting was placed on my calendar by my assistant. She noted in the entry that the Office of the Chief of Staff wanted me to attend a meeting regarding the statute of limitations. This was the only information I had about the meeting prior to joining it.

I had no discussions with Mr. Altman about the issue raised at the meeting prior to the meeting, nor did I have any contact with anyone at the Treasury Department concerning the subject of this meeting prior to it being held.

I joined the February 2nd meeting in progress. Mr. Altman, with whom I had had previous contacts, as a member of the Administration's health care team, was speaking to the assembled group.

As I recall, Mr. Altman was explaining a process by which the Resolution Trust Corporation staff would present to Mr. Altman a recommendation as to whether or not to seek a waiver of the statute of limitations from the President and Mrs. Clinton in connection with the RTC's investigation of an Arkansas bank.

The significance of this for my office was that if and when a waiver were sought, it was sure to generate a new wave of press inquiries, to which my office, in conjunction with the rest of the White House, should be ready to respond.

Mr. Altman went on to explain that he might not be the official to whom his waiver issue would be presented. In this context, he raised the issue of recusal from the process he was describing.

He then explained that if he recused himself, a member of the RTC staff would make the final decision. He also stated that, in any case, if he did not recuse himself, he intended to follow the RTC staff recommendation, whatever it might be.

I took him to mean that he did not see any need to overrule the RTC staff and that they would decide the proper way to discharge their duties.

I then expressed my personal reaction to what Mr. Altman had said, questioning why he would recuse himself if he intended to follow the staff recommendation.

It seemed to me, by accepting the staff recommendation, no one would challenge his integrity.

I recall Mr. Nussbaum responding to my statement by saying it was a decision that Mr. Altman would have to make.

I do not have a clear recollection of the rest of the meeting. It lasted for approximately 45 minutes?

I left the meeting when it was over. I took no action, other than to make a mental note to be alert to events on this issue as they unfolded.

Several days after the meeting on February 2nd, I received a call from Mr. Altman telling me that he had decided not to recuse himself, and asking if I could gather a few White House staff members so he could make his announcement.

I do not recall if Mr. Altman specified the staff members; however, I did call the White House Counsel's Office and reached Mr. Nussbaum or Mr. Eggleston, I cannot recall whom. I called Mr. Ickes and Mr. Stephanopoulos.

Mr. Altman stopped by my office in the west wing shortly thereafter and spoke briefly to the individuals who had gathered in my office, and then hurried away to his next appointment.

That concludes my prepared remarks and I welcome any questions this Committee might have.

The CHAIRMAN. Thank you, Ms. Williams.

Let me pick up right at the end of your statement on this second meeting when Mr. Altman came back to indicate that he had decided not to recuse himself.

What did he say in that meeting?

Ms. WILLIAMS. He said I am not going to recuse myself. I have decided not to recuse myself.

The CHAIRMAN. How long would you say that meeting lasted?

Ms. WILLIAMS. It did not last long at all, because Mr. Altman had another appointment to get to. He was in fact standing, as I recall, and had his briefcase in his hand.

The CHAIRMAN. Did he give his reasons?

Ms. WILLIAMS. No, he did not, not that I recall.

The CHAIRMAN. Now, do I understand, you indicate that your best estimate is that the meeting the day before lasted about 45 minutes?

Now last night, Mr. Eggleston estimated that about half the meeting time was devoted to the recusal issue.

Would that be your recollection, or not?

Ms. WILLIAMS. I have not thought about the amount of time, quite frankly. I just remember, on the whole, it was about 45 minutes.

The CHAIRMAN. Well, I want you to think about it for a minute.

How long do you think the recusal part would have taken, as a percentage of the whole meeting?

Ms. WILLIAMS. Well, since I came in late to the meeting, it is difficult for me to say if it were half of the meeting. I do not recall the exact time that I came into the meeting, but it was in progress. They had settled into a meeting.

But I was there for some discussion of the recusal, but I do not know how much time.

The CHAIRMAN. When Mr. Altman testified before us the other day, he indicated that in the hours before the meeting on the 2nd, the first meeting here of the two, that he had reached a decision to recuse himself, and that he was going to express that view at that first meeting on February 2nd, the one that we have just discussed and you arrived at a little bit late.

And so he came into that meeting.

Were you there at the time when he indicated that he had decided that he was going to recuse himself?

Ms. WILLIAMS. I do not believe that I was there, because my general understanding was that he was in a decisionmaking mode; that he had not necessarily made a decision.

The CHAIRMAN. Well, he must have given some indication as to his intention, did he not? Is that not what triggered the discussion?

Ms. WILLIAMS. Well, what triggered my interest and I guess my attention in the discussion itself, was his discussion of the process by which the President and Mrs. Clinton would be asked to possibly waive their rights to the statute of limitations.

And so I responded, in terms of the recusal, to the limited question of whether or not they would be asked to waive their rights and the process by which this decision would be made.

If the RTC staff would make the decision or, on the other hand, I believe he said, or on the other hand, if I decide to recuse myself, the RTC staff will make the decision. If I stay in the position then I will be making the decision.

That is what triggered the discussion for recusal for me.

The CHAIRMAN. Well, Mr. Altman had a briefing sheet from which he was working in that meeting on the 2nd.

I want to read you the last line on his briefing sheet. This was prepared ahead of time, and he affirmed that in his testimony here just a day ago.

On this briefing point, he says this:

I have decided that I will recuse myself from the decisionmaking process as Interim CEO of the RTC because of my relationship with the President and Mrs. Clinton.

And so the clear sense we have from his testimony was that he had made this decision, he went to the meeting with an intention to express it, and did so.

Now I want to know whether you heard that part of the discussion or not?

I know you have testified that you thought that he ought not to recuse himself.

Ms. WILLIAMS. That is right.

The CHAIRMAN. And I am going to come to that in a minute.

And apparently Mr. Nussbaum also expressed himself that Mr. Altman should not recuse himself.

But are you saying to us, did Mr. Altman, when you were there, indicate that his intention was to recuse himself?

Ms. WILLIAMS. Sir, I am saying to you, to the best of my recollection, I did not hear him say that.

The CHAIRMAN. All right, now let me get to the point, the view expressed by others in the room.

In your deposition, you have indicated to us that your reaction to this discussion was that he ought not to recuse himself.

Is that correct?

Ms. WILLIAMS. My reaction was to Mr. Altman saying that whatever the decision that the RTC staff would render about waiving the rights of the statute of limitations, he would accept. And my approach was a commonsense approach to this, which is, if you are going to depend on and defer to staff in this matter, which I thought was a perfectly appropriate thing for him to do since they had been working on the case and knew best, then why should you have to recuse yourself.

The CHAIRMAN. Well, I understand the reasoning, and I am glad to have that, but the bottom line then is that it was your view that he ought not to recuse himself then.

Is that right?

Ms. WILLIAMS. With respect to the statute of limitations which was what I was focusing on and his decision in that matter in terms of accepting a recommendation, one way or the other, I thought he should not recuse himself.

The CHAIRMAN. All right.

Now, with Mr. Nussbaum, did Mr. Nussbaum indicate his opinion that Mr. Altman ought not to recuse himself?

Ms. WILLIAMS. I do not recall exactly what Mr. Nussbaum said but I do recall that after I made my statement, that Mr. Nussbaum had said, whatever the decision, Mr. Altman will have to make it, or something to that effect.

As I indicated in my statement, although now I wish I had been much more attentive, at the point that I felt I understood from Mr. Altman what the process was to be, because that really is what I was interested in at that point, and I had had my say, I must admit to you that my attention wandered from that meeting.

I was racing on to the next thing I had to do.

The CHAIRMAN. Now the indications we have are that Mr. Nussbaum did express the view that Mr. Altman should not recuse himself and apparently had a very strong feeling about it.

You are not aware of that?

Ms. WILLIAMS. I do not challenge that in the recollection of others, but if I am truthful to what I recall, that is not what I was focused on. I do not recall it.

The CHAIRMAN. I understand, and I appreciate that, and I want you to be truthful, and I appreciate your saying that.

Did Mr. Ickes express an opinion against recusal while you were there?

Ms. WILLIAMS. I do not recall what Mr. Ickes said.

The CHAIRMAN. Did anybody else who was in the meeting express an opinion against recusal while you were there?

Ms. WILLIAMS. I do not recall.

The CHAIRMAN. So they may have, or they may not have, you just do not have any memory of it?

Ms. WILLIAMS. Yes. I have to tell you that I just, as I do with many meetings, I kind of walk in, size up the situation, take what I think I need from the meeting, and then I am generally on to my next thought.

The CHAIRMAN. Did anybody in the meeting support Mr. Altman's intention to recuse himself?



Ms. WILLIAMS. I did not hear anyone support Mr. Altman's intention to recuse himself, but as I said to you, I did hear Mr. Nussbaum say, this is Mr. Altman's decision.

The CHAIRMAN. Thank you.

Senator D'Amato.

#### OPENING COMMENTS OF SENATOR D'AMATO

Senator D'AMATO. Thank you, Mr. Chairman.

Ms. Williams, I am interested in your interest as it related to the statute of limitations that you mentioned and what your concern might have been. You said that they discussed that and you discussed it.

Would you just touch on that for a moment?

Ms. WILLIAMS. Well, I have to tell you that I did not have a lot of concern going into that meeting, except for the fact, a great deal of my job involves trying to have enough information to be able to respond to future inquiries.

I have been a strong and outspoken person when it comes to being prepared, knowing what the landscape was. So when I was in that meeting, my concern was, what information, if any, should I have in the back of my head so if this issue moves to the forefront—

Senator D'AMATO. Recusal issue?

Ms. WILLIAMS. No. The statute of limitations. I had no idea that recusal would even be discussed at the meeting.

Senator D'AMATO. Let me ask you, did you believe that if Roger Altman stayed on, did he give you the sense that he would be—this is my word—rubber stamped, that he would take whatever decision flowed from the people at RTC?

Was that your view?

Ms. WILLIAMS. Well, my view would not be to call taking the recommendation of the RTC staff who had been working on this investigation as rubber stamp. I mean, staff plays a very important and vital part because they monitor, they watch things, they were close to the issue.

So I did not think of it as a rubber stamp. I actually thought it was a pretty intelligent decision to accept the recommendation of a staff who had been involved in this.

Senator D'AMATO. Did he indicate to you that that is what he would do, that he would take that recommendation?

Ms. WILLIAMS. Yes, he indicated to the group that that is what he planned to do.

Senator D'AMATO. But there came a point in time when Mrs. Kulka's name was mentioned. I think everybody testified they remember that, and at that point, Mr. Nussbaum expressed some strong reservations about Mrs. Kulka being the decisionmaker.

Ms. WILLIAMS. Umm hmm.

Senator D'AMATO. Do you recall that when he said, you know, she is tough and he started asking questions, how did she get hired, and will Ellen Kulka be the person?

Do you recall that?

Ms. WILLIAMS. I wish I had a specific recollection of that, but I just do not.

Senator D'AMATO. Let me ask you, there came a time, basically Mr. Altman said he was going to then consider everything that had been raised, right?

And you tell me, your impression was that he was going to think about the issue of whether or not to recuse himself?

Ms. WILLIAMS. My impression was that he was thinking about the issue.

Senator D'AMATO. OK. But the next day he called you. Is that correct?

Ms. WILLIAMS. It could have been the next day or the day after.

Senator D'AMATO. And he said what? He said something about gathering people together, a group of people together because I want to tell them that I have made a decision and I am not going to recuse myself, I am going to stay on?

Ms. WILLIAMS. Yes, Senator, that is correct.

Senator D'AMATO. And you then called up some people to get them together because Roger was coming over to make that announcement?

Ms. WILLIAMS. Well, what Mr. Altman said to me, when he called me, and I do not remember if he called me specifically, if that was the reason for his call. It could have been other things, like Health Care too, but then he said I have decided not to recuse myself, and I would like to tell some people there.

And as my statement reflects, I am not quite sure if he told me who to gather, or I just guessed who should be involved.

Senator D'AMATO. Did he mention George Stephanopoulos, to get him?

Ms. WILLIAMS. As I said, I do not recall how we actually came to that. He could have named the people that he wanted to talk to, or I could have just guessed that this would be the group.

Senator D'AMATO. Let me ask you something. In the case of Whitewater, have you ever expressed your opinion, and I am now quoting from a diary that Mr. Altman had, that "Hillary Clinton was paralyzed by it, and if we do not solve it within the next 2 days, you do not have to worry about her schedule on Health Care"?

This is Mr. Altman saying that you told him this in his notes, and he quotes you on this.

I know you have heard about the diary and you have had occasion to see these notes.

Did you have a conversation with Mr. Altman about Whitewater and the impact it was having on the First Lady?

Ms. WILLIAMS. To the best of my recollection, I did not have a conversation with Mr. Altman where I characterized Mrs. Clinton as paralyzed.

First of all, if you look at Mrs. Clinton's schedule in December, in January, in February, paralyzed would be far from the word one would use to describe her.

So I just find it difficult to think of myself as having said the word paralyzed. Additionally—

Senator D'AMATO. But did you have a conversation with him in which you may have expressed "paralyzed" and he used it and he quoted you, you said "paralyzed", and he puts it in quotes? Did you

have occasion to speak with Mr. Altman as it related to the impact Whitewater was having on the First Lady?

Ms. WILLIAMS. Senator D'Amato, as I had said before, to the best of my recollection, I did not have a conversation with Mr. Altman.

Senator D'AMATO. All right. That is, you know you had conversations but not as it related to the mental state of the First Lady in relationship——

Ms. WILLIAMS. Senator, may—excuse me, I do not mean to interrupt but I think that I can give you more help in clarifying my state of mind, which I am happy to talk about.

My state of mind during this period was that I was saying to everyone, Mr. McLarty, anyone who would listen to me on the staff, that Whitewater was a distraction from the President's agenda, and we needed to work on a coordinated response. So that is what I was saying during that period of time.

I would never talk about Mrs. Clinton's state of mind to anyone, so I am surprised to see that Mr. Altman has quoted me in a diary saying so. I would not say that.

Senator D'AMATO. OK, he has one other thing. He says, "Maggie's strong inference was that the White House was trying to negotiate the scope of an Independent Counsel with Reno, and having enormous difficulty."

Do you recall ever speaking to him about the Independent Counsel and Mrs. Reno negotiating the scope, and they were having enormous difficulty?

Ms. WILLIAMS. Senator, I can say with absolute certainty that I did not have a discussion related to the scope or negotiating the scope.

Senator D'AMATO. Limiting the scope?

Ms. WILLIAMS. Yes.

Senator D'AMATO. OK, all right. It is just in the diary and it is something, I think, that if it came to your attention, you would ask the same thing, but we will get back to that later.

Thank you.

The CHAIRMAN. Senator Sarbanes.

#### OPENING COMMENTS OF SENATOR SARBANES

Senator SARBANES. Thank you very much, Mr. Chairman.

Ms. Williams, I am just curious. Where is your office located in the White House complex?

Ms. WILLIAMS. I share an office with staff members in the old Executive Office Building of the White House complex, and then I have an office that is my own in the West Wing of the White House.

Senator SARBANES. And where is it in the West Wing, in proximity to Mr. McLarty?

Ms. WILLIAMS. It is on the second floor of the White House. Mr. McLarty's office is on the first floor.

Senator SARBANES. Is the Counsel's Office near you, the White House Counsel's Office?

Ms. WILLIAMS. Yes, it is. It is very near, down the hall. There is only one other office between my office and the Counsel's Office, Mrs. Clinton's office.

Senator SARBANES. Now, how did you ever get to the meeting of February 2nd?

Ms. WILLIAMS. How did I get there, sir?

Senator SARBANES. How did it come that you were at that meeting?

Ms. WILLIAMS. My assistant told me that there had been a call from the Office of the Chief of Staff to the President. And of course, if you get a call from that office, it would serve you well to be at that meeting.

Second, I am an Assistant to the President, in addition to my duties as Chief of Staff to the First Lady and so it is not unusual for me to be invited to any number of meetings on issues concerning the White House as a whole.

Senator SARBANES. So you got there because Mr. McLarty's office called and said you should go there?

Ms. WILLIAMS. That is correct, sir.

Senator SARBANES. Mr. McLarty was not at that meeting?

Ms. WILLIAMS. That is correct, sir.

Senator SARBANES. Did you feel you were there sort of in place of him?

Ms. WILLIAMS. In place of Mr. McLarty?

Senator SARBANES. Yes, since he was not there.

Ms. WILLIAMS. Oh, no. I thought I was there to be myself.

Senator SARBANES. All right.

Now you have recounted what transpired at that meeting. Was it the next day that you had this meeting with Altman?

Ms. WILLIAMS. As I said before, I believe it was 2 days later, although my recollections may not be specific, but I believe it was shortly after the meeting.

Senator SARBANES. Well, Mr. Altman says it is the next day. Are you saying it was not the next day but 2 days later?

Ms. WILLIAMS. No. What I am saying, because it was an impromptu meeting, and does not appear on my calendar, I recall it as being maybe 2 days later. It could have been the next day. I would not challenge that recollection.

Senator SARBANES. Now, did Altman call you to have that meeting.

Ms. WILLIAMS. Mr. Altman did call me.

Senator SARBANES. He says that he called Ickes.

Ms. WILLIAMS. Well, as I recall, Mr. Altman called me and he asked me to assemble a group because he wanted to tell them that he had decided not to recuse himself, and that meeting—

Senator SARBANES. You are very clear about that, that he called you?

Ms. WILLIAMS. I am very clear about that, yes, sir, I am.

Senator SARBANES. He called you and asked you to assemble a group.

Why did he want to assemble a group?

Ms. WILLIAMS. I do not know what his specific motivations were.

Senator SARBANES. Why did you think he was—what was your reaction to this call from Mr. Altman saying, I want you to assemble—did he tell you what group to assemble?

Ms. WILLIAMS. As I stated before in my testimony, let me try and take those questions one at a time. I am not sure whether or not he told me who should be assembled or if I guessed at it.

With respect to the reason for having the meeting itself, Mr. Altman seemed to be clear he wanted to tell people at the White House that he was not going to recuse himself. That seemed to be the purpose of the meeting.

Senator SARBANES. Now who did you assemble for that meeting?

Ms. WILLIAMS. I called the White House Counsel's Office. I do not remember if I spoke to Mr. Nussbaum and he was not there, and I reached Mr. Eggleston. I do not know which of those two from the Counsel's Office came.

I called Mr. Ickes and I called Mr. Stephanopoulos, and I think that is about it.

Senator SARBANES. Now do you remember who was at the meeting?

Ms. WILLIAMS. I remember Mr. Ickes being there. I remember Mr. Stephanopoulos being there. I cannot recall if it was Mr. Nussbaum or Mr. Eggleston, but it seems to me that someone from the Counsel's Office was there.

Senator SARBANES. Anyone else?

Ms. WILLIAMS. That is all I recall coming to the meeting.

Senator SARBANES. Tell me about that meeting.

Ms. WILLIAMS. Well, it was not much of a meeting, quite frankly. People kind of drifted in. I remember it being around lunch time or lunch time for us. I do not know. I remember it being around lunch time and people kind of wandering in.

I remember Mr. Altman coming in, standing near the door, having his briefcase in his hand, and saying, I just wanted to let you know I have decided not to recuse myself.

And that is what I recall of that meeting.

And then he left.

Senator SARBANES. Did people say anything to him when he said he was not going to recuse himself?

Ms. WILLIAMS. I do not know exactly what people said.

I do not have a recollection of what people said.

Senator SARBANES. What did you say?

Ms. WILLIAMS. Well, I had already talked to Roger previously, since I had set up the meeting, and he said I have decided to recuse myself, and I am sure that I—

Senator SARBANES. Decided not to recuse.

Ms. WILLIAMS. I am sorry, decided not to recuse myself. And I think—

Senator SARBANES. What did you say to him then?

Ms. WILLIAMS [continuing]. I probably—

Senator SARBANES. This is on the telephone?

Ms. WILLIAMS. Yes.

I probably said, OK, that sounds good. Because, of course, I had been a person at the meeting, the previous meeting who had said, if you are going to accept the recommendation of the RTC staff, which I think is a good thing to do, why then should you recuse yourself.

Senator SARBANES. How long did that meeting last?

Ms. WILLIAMS. Oh, not long at all. If it was 10 minutes, I would be—

Senator SARBANES. Ten minutes?

Ms. WILLIAMS [continuing]. If it was 10 minutes, I would be surprised. I remember that Mr. Altman had to get away. He had an appointment on the Hill and he was hurrying off. It did not seem long.

Senator SARBANES. So it is your recollection that that meeting lasted about 10 minutes?

Ms. WILLIAMS. It is my recollection that it was not very long. I say 10 minutes because I cannot—everyone was standing is what I remember. It was not people sitting down, and I know that Mr. Altman had an appointment on the Hill that he was rushing to.

Senator SARBANES. Well, there must have been some discussion, then, if it lasted 10 minutes, beyond Altman simply saying, I have decided not to recuse myself.

Could you tell us about that discussion?

Ms. WILLIAMS. Sir, there may have been discussion. I cannot tell you exactly what that discussion was. I have to tell you that at the time this was happening, none of this seemed terribly significant to me in terms of the things that I should remember.

This happened in February. I do not recall every discussion at every meeting.

Senator SARBANES. If I could just make this. Mr. Altman I think told us the meeting lasted 30 seconds or Eggleston.

Senator GRAMM. Mr. Chairman.

The CHAIRMAN. Senator Gramm.

#### OPENING COMMENTS OF SENATOR GRAMM

Senator GRAMM. Thank you.

Mr. Chairman, this February 3 meeting may not have been an important meeting for Ms. Williams, but it was a very important meeting for Roger Altman.

I want to go back and set out the parameters for all of this, because I think people trying to follow what is going on here forget how it all fits together. Let me try to be brief, even though I am sorry I talk very slowly.

Roger Altman was appointed by the President to head the RTC and be its Chief Executive Officer on a temporary basis. Roger Altman was a very close, long-time friend of the President, went to college with him. As any good friend should, when President Clinton ran for President, Mr. Altman raised for him hundreds of thousands of dollars. We should all have friends like that.

Roger Altman, in his capacity as head of the RTC, was notified by Mr. Roelle, a career employee of the RTC, that there were 9 criminal referrals on their way to Washington, and that the President and the First Lady's names were mentioned in those referrals. Under normal circumstances, to communicate with people who are mentioned in criminal referrals would be improper, unethical, and, depending on the intent, could be an obstruction of justice.

Roger Altman decided that, because this information could leak to the press, he was going to notify the White House. We have two sworn testimonies that in fact he ordered that the White House be notified.

Now, let us move to the first of the year. We are in a period where there is immense pressure on the Whitewater investigation with regard to the statute of limitations, which is about to run out. Roger Altman is concerned about people believing that there is something wrong with a very close friend of the President, himself being in charge of an investigation that might involve the President. He decides to recuse himself. We have all kinds of sworn statements that he decided to do it. He comes over to the White House on February 2 to deliver the message. He has a briefing paper saying he is going to do it. Yet he walks out of the meeting and he has not recused himself.

Not one single person can recall anyone ever saying to him, do not recuse yourself. But in a diary that the Treasury Chief of Staff and sort of confidante of Mr. Altman is writing during the period, Roger Altman is described as having originally decided to recuse himself. But intense pressure from the White House, Mr. Steiner then writes, at a fateful White House meeting with Nussbaum, Ickes and Williams, the White House staff told Roger Altman that his recusal was unacceptable. Obviously unacceptable that he take himself out of this Whitewater investigation, which is what recusal means.

Again, in outlining the advantages and the disadvantages of the recusal, this same Chief of Staff puts on his computer, that the White House may feel defenseless prior to the appointment of a new CEO if Roger Altman left, stepped down, took himself out of the Whitewater investigation.

Now, I assume, Ms. Williams, you do not recall anyone ever saying to Roger Altman that he ought not to recuse himself either?

Ms. WILLIAMS. I believe in my testimony I indicated that I said why should you recuse yourself if you intend to accept the recommendation of the RTC staff, whatever that might be.

Senator GRAMM. And in fact, we know from last night, that the President was upset when Roger Altman did recuse himself, because the President felt he was being stampeded into it, though Roger Altman himself thought he should do it. Secretary Bentsen has told us he thought that Altman should do it.

Now, he calls you up the day later, at least we think he does, and he says, I want you to set up a meeting. He is come on the road to Damascus. He has had a dramatic conversion. Nobody told him not to recuse himself, but he changes his mind for some reason. From the Treasury, Mr. Altman calls you up and says, I want to come over to the White House and tell people that I am not going to take myself out of the Madison investigation. I want you to get people together, he tells you, because I want to come over there and tell them.

Mr. Altman comes over to the White House, to your office. You gathered these people together. He sticks his head in the door and says, I have decided not to take myself out of the Whitewater investigation.

You say that the meeting lasted 10 minutes.

I talk pretty slowly. Mr. Altman's from New York. He talks real fast. There is a little problem there, but let me ask you a question.

Ms. WILLIAMS. Certainly.

Senator GRAMM. I do not think of you, as Chief of Staff for the First Lady, as being in the chain of command at the White House. Why would Roger Altman call the Chief of Staff of the First Lady and ask her to set up this meeting?

Ms. WILLIAMS. Well, first of all, let me try and explore with you a little bit your first premise, which is you do not think of me as being in the chain of command in the White House.

If I am an Assistant to the President, one of 17, when there are approximately, what, about a thousand employees in the Executive Branch, then clearly my position puts me, if not in the chain of command, certainly in an area where decisions that are being made might come to my attention.

Senator GRAMM. But why you?

Ms. WILLIAMS. Well,—

Senator GRAMM. On this issue, on the recusal issue, which you say you were not even interested in, and I do not doubt that, why you? Why did he call you?

Ms. WILLIAMS. You would have to ask Mr. Altman why he called me.

Senator GRAMM. Why do you think he called you?

Ms. WILLIAMS. One, Mr. Altman and I talked frequently about Health Care, all the time, in fact. In fact, one of the things that I did both as an Assistant to the President and Chief of Staff to the First Lady is I did a lot of meeting facilitation.

I would try and get—

Senator GRAMM. Well, but he says in his diary that he had talked to you about Whitewater. He has in quotes that you had told him, “that the First Lady was paralyzed by it.”

Ms. WILLIAMS. Senator Gramm, you must let me take one question at a time. If you want me to go back and talk about the diary, then I am happy to do so.

If you want me to finish this one question—

Senator GRAMM. My one problem is that my light is about to turn red and I am not going to get back to ask a question for 2 hours. You understand that.

Ms. WILLIAMS. I understand that, but my problem is I have to tell you what I know.

The CHAIRMAN. We will give you a chance, when he finishes, to answer both questions.

Senator GRAMM. If, on my time, you will go back and try to tell me why you think he, of all the people he could have called, why he would call the Chief of Staff of the First Lady to set up this meeting for him to come over and say, I am not taking myself out of the investigation of Madison?

Ms. WILLIAMS. First of all, let me say that I am very uncomfortable speculating about why Mr. Altman called me, because it will only be speculation.

But I will say that I talk to Mr. Altman regularly in the course of Health Care. I will say that I am known to be a person who puts people together to facilitate meetings. I would also say that I have instant access to Mr. Ickes, Mr. Stephanopoulos, and also people in the Counsel's Office.



So I think it might have been as a matter of convenience kind of one-stop shopping, since this is what I had done during my work on Health Care.

In the second question what about the diaries?

Senator GRAMM. Well, I was simply, in the second question, pointing out that you had had previous contact with Mr. Altman. He had referred in his diaries to Whitewater and had put in parentheses, as if it were a quote from you, about the First Lady being paralyzed by the Whitewater matter.

Did that have anything to do with Mr. Altman wanting to deliver what at least he perceived that the White House would view as great and glorious news, that he was not taking himself out of this investigation?

Ms. WILLIAMS. Well, first of all, you start, in my view, from the wrong premise. You start from the premise that I had conversations with Mr. Altman about Whitewater. Now, his diary may say that, but my testimony to you today is that I do not have recollections of those conversations, so I cannot even start from that premise.

The CHAIRMAN. Your time is up here, and we can come back to this in another round.

I do not know if you had a chance to see those diary entries, but have you? Because I want you to have them if you are going to be asked questions about them.

Ms. WILLIAMS. They have been read to me, and I understand essentially what they say.

The CHAIRMAN. Very good. Thank you.

Senator Dodd.

#### OPENING COMMENTS OF SENATOR DODD

Senator DODD. Thank you, Mr. Chairman.

First of all, Ms. Williams, I think your testimony has been excellent to this point and I would like to bring up one point immediately, because we had some testimony yesterday from one of the members of the Counsel's Office about the length of the February 3 meeting, and someone can check the record for me, but my recollection of less than 24 hours ago is that one of the attorneys said the meeting lasted something like 10 seconds.

I do not know whether they were engaging in a little hyperbole to create the impression it was brief. You said no one sat down. That certainly gives me the impression that this was not a meeting of any length at all. Normally, people sit a little bit.

So that meeting lasted how long, roughly in your mind, 10—we heard 10 seconds, you said 10 minutes. Obviously, someone is going to make a lot of this, I promise you. We might as well get to it right away, and it sounds to me like you are both probably within the ball park.

It was a brief meeting?

Ms. WILLIAMS. Brief would be a correct characterization of it.

Senator DODD. No one sat down?

Ms. WILLIAMS. No one sat down.

Senator DODD. You do not recall any conversation per se about it?

Ms. WILLIAMS. No, I do not.

Senator DODD. OK.

You clearly recall Mr. Altman calling you to set up that meeting?

Ms. WILLIAMS. I do recall that.

Senator DODD. Mr. Altman says that he believed he called Mr. Ickes. However, I think he also said he could easily be wrong about that, in fairness to him here today. Although he believes he called Mr. Ickes, we can ask Mr. Ickes and I think probably close the loop on that this afternoon.

Let me also ask you this. Senator Gramm just made reference to the words in the diaries. We have heard some rather florid language in diaries over these last several days. I almost think someone were an understudy for Louis Lamour to hear some of the language.

Are you in the habit of talking about Mrs. Clinton's moods with people in the White House, friends of yours, and how she is doing from day to day, or feeling?

Is that something you are likely to share with even close friends?

Ms. WILLIAMS. It is not something that I would share with close friends. It is not something that I would share with anyone, maybe my immediate staff. Otherwise, I think it just amounts to gossip.

Senator DODD. Well, I happen to agree with you, and I presume you would not be in your job long if that were the case. I certainly would not tolerate it in my office, and I presume the First Family would not be particularly anxious to have someone discussing their moods with people.

So I accept your answer in that matter as being fairly good.

Mr. McLarty, welcome to the Committee.

Mr. McLARTY. Thank you, Senator.

Senator DODD. Let me run through a series of questions for you.

When did you first learn about the RTC's criminal referral regarding Madison?

Mr. McLARTY. Some time in November.

Senator DODD. Of?

Mr. McLARTY. 1993.

Senator DODD. And when did you first learn that Jean Hanson had spoken with Mr. Nussbaum on September 29, 1993?

Mr. McLARTY. After Mr. Altman's testimony to this Committee, after February 24th.

Senator DODD. After February 24th?

Mr. McLARTY. Yes, sir, that is correct.

Senator DODD. Let me ask you this.

Do you believe it was appropriate for Ms. Hanson to have had that discussion with Mr. Nussbaum and others at the White House?

Mr. Chairman, I am having a hard time—Mr. Chairman, I am just having a hard time hearing.

[Pause.]

Do you believe that it was appropriate for Ms. Hanson to have had the discussion with Mr. Nussbaum?

Mr. McLARTY. I asked Mr. Cutler, the White House Counsel, to look into all of the matters in this time period, and I believe that he concluded that he felt this meeting was appropriate, and I would rely on his judgment.

Senator DODD. Do you have any knowledge, Mr. McLarty, as to whether or not Ms. Hanson received instructions? We have heard a lot of different words used to describe how she was, how that meeting occurred. I gather it was around the Waco discussion, and at the end of that, sort of an aside. We have had enough testimony, I think, to probably establish that was the case.

Do you have any knowledge as to whether or not Ms. Hanson was sent to that meeting by Mr. Altman?

Mr. McLARTY. No, I do not, Senator.

Senator DODD. Now, you did not attend the February 2, 1994, meeting?

Mr. McLARTY. That is correct, Senator Dodd.

Senator DODD. But you received a call after that meeting from Mr. Altman?

Mr. McLARTY. Yes. Mr. Altman called me a couple of days after that meeting, and I returned his call.

Senator DODD. Well, as it pertains to the subject matter before this hearing, did any part of that conversation touch on Mr. Altman's discussions during the February 2nd meeting?

Mr. McLARTY. I do not know that he characterized them that way. He called me, I returned his call a couple of days later. When we made connections, he noted he was weighing the matter of recusal. I listened.

Senator DODD. Let me stop you there.

This was a couple of days after, this is like maybe February 4th, then?

Mr. McLARTY. Somewhere in that time frame.

Senator DODD. So it is after February 3rd, it is after the February 3rd meeting, as well?

Mr. McLARTY. Senator, as I recall it, it was a couple, three days after the February 2nd date that we made connections.

Senator DODD. He is weighing recusal at this point?

Mr. McLARTY. He told me he was weighing recusal. I listened to him, told him I was sympathetic with the situation, and encouraged him to make the judgment he felt was the right one. It was a brief conversation.

Senator DODD. Did you get the sense from him in that conversation that he was sort of agonizing over this decision somehow?

Mr. McLARTY. I do not know that I would use the word agonizing. He said he was weighing the matter, as I recall the telephone conversation, Senator.

Senator DODD. Did he mention to you at all what had happened at the February 2nd meeting regarding conversations with Mr. Nussbaum and others about reasons why he should not recuse himself?

Mr. McLARTY. No, it was not a lengthy conversation and I do not recall that kind of detail in this telephone visit.

Senator DODD. I presume you have explored the issue, since it has now been a matter of public discussion for some time about what happened at that February 2nd meeting regarding the recusal discussion.

Can you share with the Committee what you know about what was said at that meeting and whether or not, in your opinion, what was said by Mr. Nussbaum and others constituted pressure, for

lack of a better word, since that one's been used the most around here in the last several days?

Mr. McLARTY. Well, Senator, it is my understanding that Mr. Altman, I believe, has testified he did not feel any pressure, and it is my understanding that the other people that attended that meeting felt they were not applying pressure.

In terms of my own opinion, I think there has been a number of views expressed about the matter, and Mr. Cutler and others can speak to that.

I am of the view, really, very much like Secretary Bentsen, that it really is up to the individual to make his own judgment and that is what I encouraged Deputy Secretary Altman to do.

Senator DODD. Ms. Williams, let me jump very quickly to two final questions.

In that February 2nd meeting, we have heard testimony that Mr. Altman made the point specifically at that meeting that Ms. Kulka was going to handle the RTC civil matters, make all the decisions on it, and that the February 28th deadline was not going to pose a problem because a complaint could be filed.

What is your recollection regarding that testimony?

Do you agree with that, or disagree with that?

Ms. WILLIAMS. On the whole, I believe I agree with that. I do not remember the names. Ms. Kulka's name does not strike a bell with me, but I would not challenge that if names were discussed.

Senator DODD. Did he make it clear that someone else was going to be responsible for this other than himself?

Ms. WILLIAMS. Yes, he did.

Senator DODD. All right. Mr. Chairman, can I ask one last question here?

The CHAIRMAN. All right.

Senator DODD. This is the question I have asked all of the witnesses, because it goes to the central question I think, and I apologize. I read it because I want every word to be correct in it, and I ask this of both of you.

Did either of you take or instruct anyone to take any action to obstruct or impede the Resolution Trust Corporation's handling of either the criminal or civil case against Madison Guaranty?

Mr. McLarty.

Mr. McLARTY. No, sir, I did not.

Senator DODD. Ms. Williams.

Ms. WILLIAMS. No, sir, I did not.

Senator DODD. Are either of you aware of anyone in either the RTC or the Treasury Department or the White House taking any action to obstruct or impede the Resolution Trust Corporation's handling of either the criminal or civil case against Madison Guaranty?

Mr. McLarty.

Mr. McLARTY. No, sir, I am not, as I commented in my opening statement.

Senator DODD. Ms. Williams.

Ms. WILLIAMS. No, sir, I am not aware.

Senator DODD. Thank you, Mr. Chairman. I apologize.

The CHAIRMAN. Thank you, Senator Dodd.

Senator Mack.

### OPENING COMMENTS OF SENATOR MACK

Senator MACK. Thank you, Mr. Chairman.

And allow me just a moment of lightness here, if I could. It has all been pretty tense over the last 3 or 4 days.

One of the observations I have picked up about what is going on down at the White House, and I think you might want to take back down there, is the theme I see kind of running throughout here, that no one has time to sit down, all conversations are brief conversations, and nobody remembers anything.

And so maybe the suggestion would be to maybe slow things down a little bit, have longer conversations, sit down and discuss things through, and maybe someone will remember something.

Anyway, it is just a side comment. [Laughter.]

Mr. McLARTY. Senator, as always, we will take your comments under advisement.

Senator MACK. Ms. Williams, are you aware of a memo written by Bruce Lindsey on October 20th, which he copied to you, concerning press inquiries about the criminal referrals on Madison?

Ms. WILLIAMS. No.

Senator MACK. Do you have any idea why you would have been copied on such a memo?

Ms. WILLIAMS. No. I am not clear why I would have been. I have since seen that memo, and it is about a press inquiry, and the Director of Communications was copied on that memo, so I could have been copied because it was a press inquiry.

However, Mr. Lindsey, I believe, has testified that in fact the memo may never have gotten to me at all because the cc's on it were for an earlier memo. I do not know exactly the ins and outs of that, but I am sure Mr. Lindsey can speak to it.

Senator MACK. Would it be normal for you, though, basically to be copied on concerns, (a) about press, and (b) about what was going on with Whitewater?

Ms. WILLIAMS. I would generally be copied about press inquiries, yes.

Senator MACK. You stated that the Whitewater response team was formed in October or November. Since two of the members of the team were copied on this memo, was it the subject of any of those meetings?

Ms. WILLIAMS. Well, first of all, to the best of my recollection, there was no Whitewater response team in October or November, as such. The Whitewater response team, as I recall, and Mr. McLarty may be helpful since he organized it, was in January, was when we first had any meetings, organized meetings in any kind of routine way.

I recall January specifically because Mr. Ickes did not come to the White House until January, and he was the person who was asked to focus, in an organized fashion, on Whitewater press inquiries.

Senator MACK. OK, let me just ask one more follow up to that.

Ms. WILLIAMS. Yes, sir.

Senator MACK. Are you saying to us that you were not at meetings during October and November of 1993, where the criminal referrals were discussed?

Ms. WILLIAMS. That is what I am saying, sir, other than the February 2nd meeting, I had not been at any other meetings.

Senator MACK. All right.

At this time, Mr. Chairman, I would just yield the balance of my time to Senator Gramm.

The CHAIRMAN. Senator Gramm.

Senator GRAMM. Thank you, Mr. Chairman.

Let me go back to this question about the entry by Mr. Altman into his private diary, a diary that he never had any reason to believe was ever going to be made public, ever scrutinized, in which he says that you told him the First Lady was paralyzed. And let me say that how the First Lady felt on any day is none of our business in many ways, but it is only relevant to this issue, it seems to me, because of this meeting in your office on February 3rd.

Mr. Altman is asked, in sworn testimony, what did you understand Ms. Williams to be conveying when she talked about solving this problem, the problem about the First Lady. And Mr. Altman says, "Mrs. Clinton is upset. My understanding was that, or the context was that, Mrs. Clinton was so distracted or upset by Whitewater, she could not," and then he loses the focus.

Mr. Altman had called on February 3rd and asked you to set up a meeting so that he could come over to the White House to tell people, after this meeting the day before, that he had decided not to recuse himself. He had come over to the White House on February 2nd to announce his recusal but now he changed his mind. Now he is coming back to say, I am not going to take myself out of the Madison investigation. He makes that announcement in your office.

We have had this dispute about time, and your Counsel has told you that, well, isn't 10 seconds 10 minutes. I'll leave that alone for the time being, but let me ask you a question.

Did you report this meeting, or did you ever have any discussion about the recusal issue, or about Altman's recusal decisions, with the First Lady?

Ms. WILLIAMS. No, sir, I did not. To the best of my recollection, I did not.

Senator GRAMM. Never, ever, on any occasion, did you talk to the First Lady about Roger Altman's decision as to whether to stay in his position overseeing the Madison investigation or whether to take himself out of it?

Ms. WILLIAMS. Yes, sir, I understand the question.

To the best of my recollection, I did not.

Let me refer you to my statement. In my statement, I said that I had made a conscious decision for myself and for other members of my staff that we would not spend our time discussing issues related to Whitewater with Mrs. Clinton unless we were fact-finding to respond to press inquiries.

Let me tell you a little bit why I did this, so you will have some context and you can understand it.

Whitewater certainly was a concern in the White House. It was a distraction, but it was not——

Senator GRAMM. Let me be sure I have asked the question both ways.

Did the First Lady ever raise these issues with you?

Ms. WILLIAMS. No, she did not.

Sir, I would like to, if I may, Mr. Chairman, I would like to continue because I think it is really important for me to put this in some kind of context so you can understand the mindset that I was operating from.

I knew that in the newspapers everyday, Mrs. Clinton and the President were being beaten up on about Whitewater. I also knew that even though Mrs. Clinton does not normally read the newspapers, it would be very hard to avoid them.

I also knew that she was engaged in fact-finding with her personal lawyer, which was taking up a lot of time on Whitewater. I made what I believe was a sound and good management decision——

Senator GRAMM. Ms. Williams——

Ms. WILLIAMS. Excuse me, sir, may I just finish this please?

The CHAIRMAN. Senator Gramm, I want to let her finish.

I'll restore your time, because she has asked to do this, and I think it is important that she have the chance to do so.

Senator GRAMM. And let me say I understand you want to give us the context that is very important. You understand our frustration that we are on a clock?

Ms. WILLIAMS. I do. I understand that. I really do. But I think that this might save us time in the long run.

Senator GRAMM. I do not want my mom to watch this and say I was not letting you talk.

Ms. WILLIAMS. Right. My mom's right here and she does not want to let me talk. [Laughter.]

Senator GRAMM. Now that we understand each other.

The CHAIRMAN. Listen, why don't you have your mother call his mother. [Laughter.]

Ms. WILLIAMS. But I had made a very conscious, and I think a sound management decision about what it was I would discuss with Mrs. Clinton. I thought to myself, she has the newspapers, she has her personal lawyers, she has whoever else that she wants to talk to in the White House about it, be it the White House Counsel or whatever.

I have a job to do. My job is to focus on Health Care, to focus on our social obligations, to focus on her obligations as a First Lady. I had a staff of 13 people that were trying to do the work of 35 people and I had to keep them focused.

And the other thing, let me just tell you, I am sensitive to because this is how I would want to be approached, when I came to see Mrs. Clinton, I wanted her to see me and think, we are going to be talking about the business of the White House.

Mrs. Clinton did not say to me, when she asked me to join her staff, come and be my legal representative. What she said to me, come and we might be able to make a difference in this country.

I took her at her word, and that is how I compartmentalized my time.

The CHAIRMAN. I think that is important context and it was important that you say it.

Would you add back the time for Senator D'Amato, 2 minutes, I mean, Senator Gramm.

Senator GRAMM. Well, first of all, let me say that we would wish that everybody in American Government had that approach, and I am sure you do, and I think the country benefits from it. I do not doubt that you are focused on those things, I do not doubt that you are trying to promote that agenda.

The obvious question we are trying to ask is, you have a person who is in agony, it seems to me, from everything we know that is said in private in diaries. But in testimony, in sworn testimony, it is almost like none of this is happening. Mr. Altman is trying to make a decision. He is the President's close friend. He is overseeing a criminal investigation or a civil investigation where the President's name has been mentioned. He is under immense pressure from himself to get out of it. He is under immense pressure, at least if we believe what people write in their diaries, privately, that he is under immense pressure from the White House to stay in it.

Mr. Altman makes a fateful decision. He decides to stay in it at a critical moment when the clock is ticking away, the statute of limitations is running out, which to people in America means the danger's passed, nothing can be done about it. Mr. Altman decides to come over to the White House to tell people that he has decided to stay in it, which is what he believes they want him to do.

It seems to me that the relevant question to us is, why he would pick the Chief of Staff of the First Lady to set up this meeting. Now your answer, and I believe that the facts are right. You have instant access to everybody at the White House, you are a facilitator, you are getting things done, you can pull people together. You call up these people, they're going to be there. The question then is, did he call you as the First Lady's Chief of Staff because you can get things done and you can make it happen, or was there some special relevance about your position with the First Lady? That obviously is the question and we have heard your answer.

Let me go back to this matter of 10 minutes versus 10 seconds. There is a big difference between 10 minutes and 10 seconds. I know the Counsel believes that there isn't, but there is. The story we have heard to this point is that people have gotten together. Mr. Altman comes in the room, he has got his briefcase in his hand. He set up this meeting. He called you. He asked you to get these people together. He comes in and says, I am not taking myself out of Madison. He can say that in 10 seconds. What happened during the rest of this time? That is what I would like to know.

Ms. WILLIAMS. Well, sir, let me—

The CHAIRMAN. We need a brief answer but a full answer.

[Laughter.]

Ms. WILLIAMS. Well, sir, as I said when I was first asked about the time, I do not really remember the time. I threw in 10 minutes, not because I have an absolute recollection or I was watching the clock, but I was trying to think of a brief amount of time.

I am sorry I was not making distinctions about seconds, but I was trying to emphasize the briefness of the meeting, which is why I added to my testimony that everyone was standing up, and, as I have said in my statement, that Mr. Altman was on his way out the door.



So I do not feel confident enough to parry with you on whether it was 10 minutes or 10 seconds. But I am confident of the briefness of the meeting, given that, one, everyone was standing up, two, that Mr. Altman was on his way to an appointment, which I remember distinctly, because he had said, I am running late, I have got to get to where I am going.

So that is what I recall.

The CHAIRMAN. Thank you very much.

Senator Kerry.

### OPENING COMMENTS OF SENATOR KERRY

Senator KERRY. Thank you, Mr. Chairman.

I hope we can all get the time of answers added back to our time too.

Mr. Chairman, I think we are getting to the point with this hearing, or these 3 days have narrowed the focus of this that we may well even be getting to the point of beating to death the fairly narrow focus of what this is being reduced to, which is the question of Mr. Altman's testimony and Mr. Altman's recusal.

It's certainly not a question of any of the very highfalutin, broad sweeping allegations made over the course of months, and I think it is very important for this hearing to begin to focus on that for the American people.

Now, Mr. McLarty, you were Chief of Staff in the White House. You were also, or you are perhaps one of the very best friends of the President of the United States.

Is that true?

Mr. McLARTY. We have had a long-time relationship beginning when we both were children growing up in Hope, Arkansas.

Senator KERRY. You have known each other through almost all campaigns and through all of his life in politics?

Mr. McLARTY. We have and we worked closely together when President Clinton was Governor of Arkansas.

Senator KERRY. As Chief of Staff in the White House, you certainly have your finger on the button of power, so to speak. You have the ability to contact all the regulatory agencies, the Justice Department. You could certainly put together a White House network for dealing with Whitewater/Madison, could you not?

Mr. McLARTY. Well, yes, Senator, I could, and in some of those cases, I would go through White House Counsel to make some of those contacts.

Senator KERRY. Appropriately, I understand.

What is clear from the record here is, for all of the thousands of pages of documents that we have and all of the hundreds of hours of depositions and all of the testimony that has come before us under oath, there is in fact no evidence that the Chief of Staff of the White House organized, put together, or was involved in a slew of conversations to deal with Whitewater/Madison.

Is that accurate?

Mr. McLARTY. I think it is accurate, and I reflect that in my opening comments.

Senator KERRY. In point of fact, the only thing the White House did with respect to Whitewater/Madison in any organizational way

was have a press team put together to try to respond to the myriad of inquiries that were coming in.

Is that not accurate?

Mr. McLARTY. We tried to manage it in an orderly way, primarily with public inquiry and in many cases, non-factual basis allegations.

Senator KERRY. I want to make it clear that I think that Mr. Altman's testimony has presented problems, and I have asked many questions about that and will continue to.

And I also want to make it clear that I think some people screwed up here and made some bad judgments.

But let's also look at the overall record.

On September 29th, it is fair to say the only—this is when it begins—Treasury initiated a contact with the White House, correct?

Mr. McLARTY. I have since learned that.

Senator KERRY. Which you later learned of?

Mr. McLARTY. That is correct.

Senator KERRY. You were not notified of that when that occurred, were you?

Mr. McLARTY. No. I have already testified I learned of it after Mr. Altman testified before this Committee on February 24th.

Senator KERRY. In fact, a great period of time went by before you even knew of any criminal referrals issue having been relayed to the White House, correct?

Mr. McLARTY. I learned of it in November through public press accounts.

Senator KERRY. Through the public press, but not through anybody in the White House coming to you in a state of panic, my God, we have got to deal with this, correct?

Mr. McLARTY. That is correct, Senator.

Senator KERRY. And indeed, on September 29th, there was a Treasury initiated contact at the now famous stay-back post-Waco pre-brief? [Laughter.]

Correct? A whole new version.

Mr. McLARTY. That is your description, Senator.

Senator KERRY. Believe me, it is not my description. That was the description in the record, and it is evidence of why the American people find it so hard to understand what is going on here with graceful ducks and pre-brief post-Waco debriefs and so forth.

It leaves me, we do not discuss things here, we vet them. We have a whole new language around here.

Let me go on.

On October 16th, there is another Treasury-initiated press meeting in the office at which Ms. Hanson comes in, but Jack DeVore, a press secretary is there, and Mark Geron, press communications is there.

Again, you are not present, you are not part of that?

Mr. McLARTY. That is correct.

Senator KERRY. Did not know about it?

Mr. McLARTY. That is correct, not until some time later.

Senator KERRY. All right. Now on February 2nd, we go from September, October. Now November passes, nothing, December passes, nothing, January passes, nothing. Nothing on the record.

We get to February 2nd and Altman, again, a Treasury-initiated meeting on the question of the statute of limitations because there is an enormous amount of press interest on this.

Is that correct?

Mr. MCLARTY. By that time, there certainly was, Senator.

Senator KERRY. On February 3rd, there is a second meeting which raises questions about Mr. Altman's testimony, but again initiated by Treasury?

Mr. MCLARTY. I believe the questions about Mr. Altman's testimony were after he testified here February 24th.

Senator KERRY. I am saying in terms of a question, it raises a question in terms of his credibility before the Committee.

Mr. MCLARTY. I am sorry. I understand the question.

Senator KERRY. But it was a Treasury-initiated meeting?

Mr. MCLARTY. That is correct, Senator Kerry.

Senator KERRY. So in all of this hullabaloo about Whitewater/Madison, there are only four meetings over the space of 5 months, all of them initiated by Treasury and that is the full measure of your knowledge or involvement in this.

Is that not accurate?

Mr. MCLARTY. Senator, I believe it is. I have not recast the meetings quite as precisely, but I believe you are correct in how you outlined them.

Senator KERRY. Well, that is certainly not a sign of a White House obsessed by this issue.

Mr. MCLARTY. Senator, I agree with that, and that is why, in my opening comments, why I tried to appropriately point out what we were focused on in the White House from September through the March time period.

Senator KERRY. Now, despite the fact that you are as close as you are to the President, there was no, there is nothing in the record, no conversation, anything that indicates that somehow the President asked you to monitor this or stay in touch with it closely or anything, is there?

Mr. MCLARTY. That is correct, Senator.

Senator KERRY. Now I want to come back to an issue that does concern the Committee, and see if I can maybe ask a question, and Ms. Williams, you can maybe help me. If it is an opinion you do not want to offer, then do not.

Obviously, the Treasury was initiating an awful lot of outreach on this and many of us think much of that was inappropriate.

I would think you, in hindsight, would probably have that judgment. I hope that that may come up.

On this meeting where Mr. Altman comes to the White House, I conclude that there was clearly a lower-level White House view, an individual view expressed by some people working in what they thought may have been the best interests of the President, and who felt that Mr. Altman did not need to recuse, for whatever reasons.

Mr. Altman goes home, makes a decision, comes back and it seems is rather anxious to kind of let people know that he is going to stay on.

I guess we are all sort of left wondering, I mean, is it your sense that he was trying to please people, or curry favor, or something

by letting everybody know if this was not, in fact, a big-deal meeting?

Why else would he call and get a group together in order to notify them of this non-recusal?

Ms. WILLIAMS. Once again, I am hesitant to speculate because I know speculation just blows up on you, but I will say it was not my sense that he was in any way currying favor. I would not think that.

Senator KERRY. Was there any rational reason for doing it? Was there any——

I am sorry, my time is up.

The CHAIRMAN. Yes, we can come back to this. I will certainly see that you get a second round.

Mr. McLARTY. Mr. Chairman, if I may inquire of the Chair? I thought Senator Kerry noted, and I should have clarified it during his comment, that the October meeting, as I understand it, Mr. DeVore perhaps called, was in my office.

That is not correct.

Senator KERRY. Oh, I am sorry, I apologize.

Mr. McLARTY. That is not correct.

Senator KERRY. It was the February 2nd meeting in your office?

Mr. McLARTY. Yes.

Senator KERRY. I apologize and stand corrected.

Mr. McLARTY. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Faircloth.

#### OPENING COMMENTS OF SENATOR FAIRCLOTH

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Mr. McLarty, we have talked a lot here about the RTC criminal referrals that name the Clinton's and about the so-called, "Heads Up," that was first given to the White House on September the 29th of last year.

But that was not the first time a Clinton appointee knew about these criminal referrals. In fact, a Clinton appointee not only knew that those referrals existed, she knew what was in them.

Early in the Administration, President Clinton asked for the resignation of every U.S. Attorney in America, even those in most cases he did not have a replacement for.

But one place he was ready, and that was Little Rock.

He immediately appointed Paula Casey, a campaign worker, former law student of Bill Clinton, who became the U.S. Attorney in Little Rock.

She not only had the criminal referrals in Little Rock, she knew what was in them.

Mr. McLarty, do you know Paula Casey?

Mr. McLARTY. I am acquainted with Paula Casey.

Senator FAIRCLOTH. I do not, Mr. Chairman, plan to go outside the scope of these hearings, so I will not ask why Paula Casey failed to act on the criminal referrals that the Special Counsel now has.

I do want to ask some other questions.

Did anyone in the White House have any communication of any kind with Paula Casey or any of her staff?

Senator DODD. Mr. Chairman, that is out of order.

This is far beyond the scope.

The CHAIRMAN. Senator Faircloth, we discussed that the other day and the problem with that area, it does cross the line into the areas that we have been asked not to go into by the Senate and the Special Prosecutor himself.

I know you have strong feelings about the Special Prosecutor, and I understand that, but that would take us into a zone that is going to have to be dealt with at a later time and cannot properly be dealt with by us here now under the instructions that we have been given.

Senator D'AMATO. Let me, if I might, Mr. Chairman, say to my colleague, Senator Faircloth, that there are a lot of disturbing aspects. The question of documents in Vincent Foster's office that we have now learned of. We were supposed to be able to go into the document area of the Whitewater papers that were initially found in Mr. Foster's office that were held at the White House apparently for 5 days.

That is a subject we are going to have to wait on, that issue and others, that are beyond the scope of this hearing at this time. So I would ask my friend and my colleague to pursue it through another line.

Senator FAIRCLOTH. Well, are you saying that Paula Casey is out of the realm?

Senator D'AMATO. Yes. As it relates to the criminal referrals at this time, yes. As it relates to any meetings that she may have had with the White House, I would have to say at this time, we should not. It's permissible to press inquiries, etcetera, but as it relates to the meeting specifically in September, etcetera, I think we have to be very careful.

Senator KERRY. Mr. Chairman, I do not think it bears—I do not want to take from my colleagues time but—

Senator D'AMATO. I hope we would restore his time.

Senator KERRY. Absolutely, I think so.

But every time these questions are dropped, and then there is a sort of statement about well, we cannot go into these things or something, then the listening public says, we will, what is going on, what is going on.

And I think it bears repeating, in fairness, that this Committee is not trying to not go into something. We are not preventing the Senator from pursuing these at some point. We are simply adhering to the standards established by the Committee and the Senate to protect the investigation of the Special Prosecutor.

There is going to be a second go around and we will all have an opportunity to do this.

I do not want to leave an impression that somehow the White House, the Administration, this Committee are involved in not pursuing something, and so we are not just leaving questions hanging. There will be a time.

The CHAIRMAN. Well, it should further be said, every White House person is appearing here voluntarily. All the documents have been turned over voluntarily. We have not subpoenaed anybody, and have not had to.

So everything that we can properly look at at this time that we have asked for, we have been given. But the things that are outside

of what we can do now, we will just have to wait until another time.

Senator KERRY. But most importantly, the reason we are not pursuing them now is to protect the integrity of the process and not for any other reason.

The CHAIRMAN. That is correct, and in fact, we have been requested in writing by the Prosecutor to do that?

Senator D'AMATO. Mr. Chairman, can I——

The CHAIRMAN. I want to restore—yes?

### OPENING COMMENTS OF SENATOR DOMENICI

Senator DOMENICI. Mr. Chairman, might I just—without charging this to anybody—make a comment? If you want to, take it off of me, if I have some questions, that is fine.

I just want to make a comment regarding Senator Kerry's observation.

I think the flip side of what he says is true also. I think it is important for the public to know that there is a lot more to this than we are able to ask about. Some of these answers lead to some very logical follow ups but we are not able to ask them.

Senator KERRY. Mr. Chairman, that is not true with respect to the portion that we are now looking—that is just not—that leaves an impression there is a lot more to this.

Senator DOMENICI. Well, we are only looking into the Washington component: anything that has to do with the President and with contacts between Treasury and the RTC investigation.

Senator D'AMATO. Let me say, if I might, Mr. Chairman, and I do not think we want this to be a back and forth.

Number one, we are limited by the scope as it relates to that which was laid down and passed in the Senate Resolution.

Second, though, and I think this is fair, we had intended to go into the subject of the handling of the documents, and we would have been looking into the handling of the documents. In fact, recent revelations indicate that they have become even more important, those documents being the Whitewater papers that were found in Mr. Foster's office. What happened? How were they handled? The process.

Unfortunately, Mr. Fiske has not completed that phase and has asked to delay our investigation and public hearings on the subject. It was supposed to be part of these hearings.

So I think that is what Senator Domenici is tying into.

Senator KERRY. I agree with that. I agree with that, but that is the protection of the integrity of the process.

Senator D'AMATO. That is right.

The CHAIRMAN. Well, I am going to ask that—we have discussed this now. Every Member is going to have time to raise, in their period, if they want to make a comment on it, and I want to finish with the questioning. We have got Members waiting to ask questions that have been waiting a long time.

So, Senator Faircloth, I would ask you then to keep the questions within what we can properly cover now, and let's restart your time here to where it was, and let you finish.

Senator FAIRCLOTH. Mr. Chairman, I want to start out by saying, I thank you for the fairness with which you have conducted the meeting, and I respect your judgment in this.

But, Senator Kerry, if you are concerned that the public is having questions and the audience about where we are headed and why we are headed there and in what way, you are absolutely right.

And we have probably opened up a lot more questions than we have answered, and they are going to expect us to be answering them.

Ms. Williams, you testified that you were assigned to be part of a so-called Whitewater response team that was set up in 1993 when the first press stories on Whitewater began to appear.

Could you please describe who decided that there should be a Whitewater response team at the White House and what was the function of the team?

Ms. WILLIAMS. First of all, Senator, the White House Whitewater response team was set up in January 1994. That is my understanding. That is the first time that I was involved in participating in any such team.

Second, it was put together by Mr. McLarty who delegated to Mr. Ickes the responsibility of focusing on a coordinated response to Whitewater press inquiries.

Senator FAIRCLOTH. How often did it meet and who were the participants?

Ms. WILLIAMS. It met for a while every day. At the height of the press inquiries, it met every day. The participants were Mr. Ickes, Ms. Caputo, Press Secretary to Ms. Clinton, Mark Geron, the Director of Communications, Mr. Eggleston, I believe, David Dreyer from the Communications Department, those were initially the—

Senator FAIRCLOTH. Well, why did you wait until January to put it together when Whitewater was an issue before the Banking Committee back in early November?

Ms. WILLIAMS. Well, sir, since I did not put it together, I do not believe that you should direct that question to me, but let me say that my recollection is since we were responding to press inquiries primarily, our participation in such discussions around press inquiries heightened as the press inquiries heightened, so in October and November and December, to the best of my recollection, there were not lots and lots of press inquiries. They were starting.

In January, they seemed to be at full speed ahead, I think, so I believe that we started it in response to the press inquiries at that time.

Senator FAIRCLOTH. All right.

Ms. Williams, why did you ask whether the briefing that Mr. Altman provided on the operation of the statute of limitations in the Madison case should be provided to Mr. Kendall, the President's personal lawyer?

Ms. WILLIAMS. Well, Senator, first of all, let me say that I do not actually recall saying that, but it would not be inconsistent for me to say to anyone that there are matters that belong appropriately so I believe to the personal Counsel of the Clinton's.

I was trying to make sure, in my own mind, making a distinction between what rightfully belonged with the personal lawyer and what was an institutional matter.

So I believed if we were talking about waiving of the statute, that was not my business, that was the business of Mr. Kendall.

Senator FAIRCLOTH. In your everyday course of duties as Chief of Staff to the First Lady, did you have contacts with Mr. Kendall, the Clinton's personal lawyer?

Ms. WILLIAMS. Not in my everyday work.

There would be sometimes, however, when Mrs. Clinton could not remember a fact about Whitewater that she would say, either call Mr. Kendall or I will call Mr. Kendall and try and get an answer.

Senator FAIRCLOTH. What was the reaction of the other White House officials at the meeting, to your suggestion that President Clinton's personal lawyer be briefed on the operation of the statute of limitations in the Madison case? What did they think when you said that?

Ms. WILLIAMS. Once again, sir, it is difficult for me to talk about their reactions since I do not even remember saying that.

What I have tried to do is to volunteer to you that it would not be inconsistent of me to have said that. I was not paying any attention to any reaction because I do not recall myself saying that specifically.

Senator FAIRCLOTH. Did you ever have any conversation with Mr. Kendall, the Private Counsel to the President, concerning the possibility of obtaining a briefing by the RTC on the operation of the statute of limitations in the pending Madison case?

Ms. WILLIAMS. No, sir, to the best of my recollection, I did not.

Senator FAIRCLOTH. That is all, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Bryan.

#### OPENING COMMENTS OF SENATOR BRYAN

Senator BRYAN. Thank you very much, Mr. Chairman.

Mr. McLarty, Ms. Williams, it is nice to have you with us this morning.

Mr. McLarty, I want to focus attention in my line of questions dealing with the testimony of Mr. Altman on the 24th, before this Committee.

I continue to be very, very troubled by that testimony and yesterday we had testimony before this Committee by two gentlemen that I think are extremely able, whose instincts and judgments I think were sound, and who I think were highly credible.

Mr. Eggleston told us that on the day before the hearing, he was sufficiently concerned about how Mr. Altman's testimony was to be presented that he actually called Ms. Hanson to discuss, you know, the recusal issue there which had been the subject of the meeting on the 2nd of February.

Mr. Eggleston further told us that he was assigned to be in attendance at the time of the hearing, and that after Mr. Altman testified in response to a line of questions from Senator Gramm, Senator Bond and Senator Domenici, that he was sufficiently concerned that he left the hearing, as I understood it, placed a cellular



call to the White House to in effect say I am concerned about that testimony.

I am led to believe that thereafter, either he or others made contact with Mr. Podesta who was then in chain of command.

For whatever reason, and this is the question that I want to ask you in a moment, that was not addressed properly, in my judgment, there were a series of letters, as you know, that flowed from, I think, March 2nd to March 3rd to March 11th and there was one other letter.

Share with me what the organizational structure was in the White House because you had two fine gentlemen who I think immediately saw the problem, attempted, to the best of their ability, to alert the White House that this needed to be addressed, and I guess, to use a football metaphor, somebody fumbled the ball.

Mr. McLARTY. Senator Bryan, I think your assessment of Mr. Eggleston and Mr. Podesta and others is a correct one. The matter was brought to the White House's attention to Mr. Podesta and I believe Mr. Ickes, who made me aware of it sometime shortly after Mr. Altman's testimony.

And my direction was that we should work with Treasury to make certain that Deputy Secretary Altman's testimony was complete.

I would say, Senator, that Treasury testimony, Mr. Altman's testimony per se, he and his staff should take the lead in terms of that testimony. Mr. Podesta had worked with the Treasury Department regarding this particular hearing, at the request of Mr. Griffin, who is responsible for our legislative affairs, and me.

This hearing was a regularly scheduled hearing, as I understood it, and covered a very wide scope in its meeting.

Senator BRYAN. Mr. McLarty, when did you first become aware that there was, quote, "a potential problem," those are my words, I do not think that is the testimony precisely, but that clearly is the import of the testimony by Mr. Eggleston and Mr. Klein, when did you first become aware that there may be a problem with that testimony?

Mr. McLARTY. It was shortly after Mr. Altman's testimony. I do not recall the specific date, Senator. It was probably a day or two, if not a bit longer.

Senator BRYAN. A day or two after the 24th?

Mr. McLARTY. That is correct.

Senator BRYAN. Now what follow up, if any, did you give, or direction to Mr. Ickes or Mr. Podesta or someone else that you may have detailed to follow up on this?

Mr. McLARTY. It was my understanding, even when the matter was brought to me, that Mr. Podesta would be following with Treasury to make an effort to make certain that Mr. Altman's testimony to this Committee was complete, which I certainly endorsed and said that is precisely what we need to do.

That was my response when the matter was brought to me.

Senator BRYAN. I want to be very clear that I am not suggesting, nor should anybody infer that anybody at the White House was trying to alter that testimony in a way that would be negative to the full disclosure of the truth.

What I am trying to get at is clearly we have a problem. Podesta is notified, and I am trying to find out why it was not corrected at a sooner point in time, and you are indicating you found out about it.

Did anybody thereafter brief you and say, look, I have taken care of this matter, I have notified Treasury that it needs to be—what was the involvement you had, if any, from that point?

Mr. MCLARTY. Well, Senator, first, I appreciate your clarification because our efforts were to make certain that that testimony was complete, not to alter it in any way, but to supplement and make certain it was complete, if necessary.

Senator BRYAN. I want to say that I believe that to be true, as well.

Mr. MCLARTY. I wanted to clarify that point.

I think Mr. Podesta and others can speak with more preciseness about what was done. The matter was brought to my attention some days—a couple of days after Mr. Altman's testimony. I believe there was a weekend in between.

If I am not mistaken, Mr. Podesta answered a similar question before the House Committee and I think he can respond to you.

But when it was brought to my attention, the matter was already underway that Mr. Podesta would follow with Treasury and make certain, to the best of his ability, that Mr. Altman's testimony before this Committee was complete.

Senator BRYAN. Did anybody ever report back to you that the mission was accomplished, or give you a follow-on report as to what was done to make sure that your directions were carried out?

Mr. MCLARTY. I do not recall getting that kind of report, Senator. I may have, but I do not recall it.

Senator BRYAN. As the White House is organized, who would have handled that? Mr. Podesta is going to be a witness this afternoon, and I will ask him these questions, Mr. McLarty, but I am trying to get an understanding in terms of the structure of the White House who might have been the one that would have been given that information if you yourself have no recollection of a follow-on.

Mr. MCLARTY. Again, Senator, testimony before Congress, and of course there is a great deal of that by Cabinet Secretaries and Deputy Secretaries, as you certainly appreciate, is the primary responsibility of the Cabinet agency.

Senator BRYAN. Yes.

Mr. MCLARTY. But the activity would be, our Congressional Affairs Office, Mr. Griffin, at this point, would have been the logical contact. Mr. Podesta, because of his Hill experience and generally just a very capable professional was asked to become involved in this particular matter by Mr. Griffin and by me.

Senator BRYAN. Did Mr. Podesta report to Mr. Ickes?

Was that the chain of command or did Mr. Podesta report to you or somebody else?

Mr. MCLARTY. Mr. Podesta reported to the Chief of Staff's office as Staff Secretary. When he had special assignments, which from time to time he has undertaken over the past 18 months, and I think discharged them very well, he might report or at least have

a very close working relationship with whomever was responsible for a particular activity.

In this case, it would have been Mr. Ickes.

Senator BRYAN. Mr. Ickes would have been a logical person that he might have reported to?

Mr. McLARTY. In this particular case, Senator, let me clarify or add to that, because it was testimony before a Committee, Mr. Griffin would have been involved in that from Congressional Affairs.

Senator BRYAN. I note my time is up and we have a vote in process, so I thank the Chair.

The CHAIRMAN. Thank you, Senator Bryan.

Would someone like to continue at this point?

There is no one here at this side?

[No response.]

The CHAIRMAN. All right. I am going to proceed then for a minute myself, if no one else wishes to, and then I will adjourn in just a moment.

Mr. McLarty, I want to just follow on with Mr. Bryan's line of questioning for a minute.

It seems to me that when Mr. Eggleston, who was here monitoring that hearing, our hearing, and he was in a trip wire capacity—this is my phrase now—in the sense that he was there listening for something that might occur, and he just did not pick that hearing to come to that day. There were a lot of hearings. He came here, he was at that hearing for a reason.

He heard the testimony and he was sufficiently concerned about it. He had enough of those facts in his mind that the first moment that he had, he got up, went out into the hallway, this is his testimony, got on his mobile phone to call the White House, to say we have got a problem here, or whatever words he used, that the testimony was not complete and therefore presumably would be misleading because it was not full and complete.

I do not know if you do that all the time or not. That sounds to me like a rather unusual procedure.

Does that happen a lot?

Mr. McLARTY. You mean in terms of the White House—

The CHAIRMAN. Having somebody from the Legal Counsel's Office coming to a hearing to listen and, in turn, have an immediate response capability if a problem of this sort arises?

Mr. McLARTY. Well, Mr. Chairman, I think it would not be unusual for someone from the White House to be in attendance at a Congressional hearing. That would not be an unusual situation.

The CHAIRMAN. Well let me press you on that.

I am talking about the Legal Counsel's Office. He was not up there at the table testifying. He was not part of Altman's team. They were up in the front row and so forth. He was somewhere back in the audience.

Just as a matter of record, does the Legal Counsel's Office in the course of a week or a month of hearings, would they be up here all the time, some of the time, or on rare occasion?

Mr. McLARTY. I really, Mr. Chairman, would think on some occasions but certainly not all of the time.

The CHAIRMAN. It strikes me that it would be unusual for that to happen. It might happen on occasion, but I have to impute from

this that there was enough concern and sensitivity about this hearing that somebody from the Counsel's Office was detailed to be here in that hearing as a watchbird and as somebody to listen and be able to get back in a hurry.

Isn't that a fair conclusion to draw from this?

Mr. McLARTY. Well, Mr. Chairman, I understand your reasoning. This hearing, as I understood it or understand it, was on the RTC matters.

I think it is understandable why the White House Counsel's Office would be involved in that particular matter. And Mr. Eggleston has already given testimony to your Committee, as Senator Bryan and others have commented.

The CHAIRMAN. I guess one of the things we will have to try to pin down is why when the alert went out Mr. Eggleston was here, did his job, and realized the testimony was not sufficient. He went out into the hallway. He phoned Mr. Podesta, and that set in motion a whole chain of events.

The one event that did not get triggered was somebody coming to us promptly and saying: By the way, you just got something less than full and accurate testimony.

So then what happens is that quite a long period of time ensues. We get four clarifying letters that come on different dates thereafter, none of which, as it turns out, are complete and full.

In fact, it was not until these hearings took place that we got in a sense a full accounting insofar as one can be reconstructed, of the number of contacts and activities that would fit within the scope of the questions that were asked that day.

That is troubling. I think it is troubling as a system, as a work system. I would hope that if an alert goes out like that and goes back to the White House that there would at least be two channels that it then goes down.

One channel would be to say that within 24 hours we want that testimony corrected fully in every degree, and we want to make sure that that happens. I want somebody to come back—this is a hypothetical person in charge in the White House saying this, the Chief of Staff or somebody designated by you—and that I want to know that we are not going to leave a situation like that sort of hanging out there for days, or weeks, or in this case as it turns out to be some number of months before in this setting we are getting these facts this late in the game in a complete and a full way.

I mean, that is not good practice. You know that. Why did that not happen?

Mr. McLARTY. Mr. Chairman, I fully concur with your comments about complete testimony. I would underscore again that, while this was Treasury testimony, Mr. Podesta and others did try to make certain to the best of their ability it was complete.

I believe they feel they did so in a timely manner. Now you can press that matter further with Mr. Podesta and I think he can more precisely answer.

The CHAIRMAN. I will do that. I have got to put the Committee in recess. Our time to vote on the Floor is about to expire, and I want to go make the vote. So we will resume very shortly. I would say within 10 minutes.

The Committee stands in recess.

Mr. MCLARTY. Thank you, Mr. Chairman.

[Recess.]

The CHAIRMAN. The Committee will resume.

Let me ask people to be seated. As the witnesses prepare themselves, let me now yield to Senator Bennett of Utah.

#### OPENING COMMENTS OF SENATOR BENNETT

Senator BENNETT. Thank you, Mr. Chairman.

First, if I may simply ask unanimous consent that a column that appeared in this morning's Post appear in the record. It is by Richard Cohen. This is not Rush Limbaugh. This is not William F. Buckley. This is not even George Will. This is a man who has said in previous columns that the only Republican he would even consider voting for would have been Abraham Lincoln.

I think along the lines we were discussing last night when we were all a little tired and a little philosophical, people were putting things in the record about putting this into context. Mr. Cohen puts it into a context that I think is useful and I would ask unanimous consent that this appear in the record.

The CHAIRMAN. Without objection.

[No response.]

So ordered.

Senator BENNETT. Thank you, Mr. Chairman.

It is very clear to me from the conversations that Mr. Altman was in and out of the White House a lot.

He was a fairly regular visitor there on a variety of issues.

Is that perception correct, either one of you?

Ms. WILLIAMS. Well—go ahead.

Mr. MCLARTY. Mr. Altman was very much and is very much a part of this Administration and was involved in a number of issues. As you know, Senator, he had played a key role in the economic plan.

Senator BENNETT. OK. Was this true of Ms. Hanson, the General Counsel to the Treasury? Was she a fairly regular visitor to the White House, as well?

Mr. MCLARTY. No, I don't believe she was, Senator.

Senator BENNETT. The reason this is important to me is that when she made the call to Bernie Nussbaum that we have heard about here, she says she would not have done it if she had not been, to use her verb, "tasked" by Mr. Altman to do it; that it was kind of beyond her job description to do that voluntarily.

Mr. Altman has denied tasking her, and that is one of the issues we are going to have to face—decide, as to who is telling the truth in that circumstance.

That is why I asked the question.

Now let us go to this first meeting, the one, Ms. Williams, where you were not quite sure why you were there, but you were asked to be there so you went there.

I understand that that happens a lot, that people say we are having a meeting and you need to be there, and you have a very busy schedule and so you say, OK, I'll go, and pretty much find out what it is all about when I get there and not give it a whole lot of thought beforehand.

Is that a fair characterization of your attitude toward that first meeting?

Ms. WILLIAMS. I did not know beforehand what the meeting was about, but I have to tell you I do not think it an unusual thing for me to be a participant in meetings at the White House.

Senator BENNETT. No, I am not suggesting in any sense that it was unusual.

Ms. WILLIAMS. OK.

Senator BENNETT. When I say you did not know why you were there, it was not that it was unusual for you to be at a meeting that high powered, it was that you were not sure what the topic was going to be—

Ms. WILLIAMS. That is correct.

Senator BENNETT [continuing]. And the impetus.

Ms. WILLIAMS. Yes, Senator.

Senator BENNETT. In your deposition you used the phrase you “tuned out” of the meeting after the discussion of the recusal thing was started, and you referred to that in your testimony here today saying that you “went on to other things and started thinking about your next issue because you felt this one had been dealt with,” and you say you do that from time to time.

That is a great talent, by the way, that I think a lot of people would like to cultivate.

But just to be sure the record is completely clear and a Rush Limbaugh or somebody does not try to mousetrap you later on, I would refer to your comment in the deposition that Mr. Nussbaum made some kind of dismissive comment to you which, according to you, and I am quoting from your deposition, “was because I was a woman.”

Do you remember that? Or do you want to clarify that in any way? I do not want to make a big thing about it, but I do want to get the record very clear as to your tuning out.

Ms. WILLIAMS. Of course I do not want to clarify that, but I will since you asked me. [Laughter.]

What I referred to in my deposition was that I understood a couple of things in the meeting. One, that was informational. I felt I had gotten the information I wanted.

The other, because I am a person given to strong opinions and given to speaking them, after I had heard Mr. Altman say that he would accept the staff recommendation I spoke up and I said, “Well, then, why would you recuse yourself if you are going to go along with what the staff says, and that seems appropriate?”

And after I finished, I guess I thought that there would be much more conversation around what I had said, since I thought it was an interesting comment. And Mr. Nussbaum said, and I thought—I took it a little bit dismissively—he said, “It’ll be Roger Altman’s decision, whatever.”

And I thought, you know, once again I am the only woman in the room. I have made a very interesting comment, I believe, and Mr. Nussbaum has said, “It is Roger’s decision, anyway.”

Senator BENNETT. OK. Fine.

Thank you. I think that clarification helps because it makes it less of an issue than it might be with someone who did not have that.

Let's go to the next meeting, then, where Mr. Altman called you and said, "Will you get some people together" and you got some people together.

From your deposition, you said it was 5 minutes. Stick with the 5 minutes, because that is closer to the 10 seconds, and that helps us narrow it. I am willing to stipulate, from all the conversation, that it was 5 minutes or less.

That does not concern me. What concerns me is not the briefness of the meeting but the, if I may use the phrase, the high octane of the meeting.

You have got yourself, you have got Mr. Ickes, you have got Mr. Stephanopoulos, and you have got someone from the White House Counsel.

You do not convene a meeting with that level of people unless either the person asking for the meeting has a lot of octane connected with him or her, or the subject is a subject of intense interest, no matter how long the meeting lasts.

Busy people like yourself and Mr. Ickes and Mr. Stephanopoulos and a member of the White House Counsel's Office do not come together casually.

You all, as Mr. McLarty has so eloquently stated, had lots of other important things to do.

So Mr. Altman is passing through. He has an important appointment on the Hill. He gives his report very quickly and then moves on to his meeting, and you do not even have time to sit down.

Somebody, either Mr. Altman or you as the one who assembled the group, felt it was very important to get the message to the White House that Roger Altman had changed his mind.

Now do you think that somebody was likely to be Mr. Altman? That he felt it was very important to get that message out? Or did you, as the one who convened the meeting, feel it was very important to get that message to the White House?

Ms. WILLIAMS. Sir, I do not know what it was Mr. Altman was thinking at the time that he called me and asked me to assemble some people.

I do know that I did not place him coming to the White House to say this very high on my chart. I must confess that I did not think about it in a very engaged way, other than the fact that Mr. Altman had asked me to gather a few people and I did it.

Senator BENNETT. Thank you. My time is gone.

But if I might just summarize my reaction, it seems to me that it was far more important to Mr. Altman that the group be gathered to hear his decision than it was to the people in the group that they were looking forward to hear his decision.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Bennett.

Senator Shelby.

#### OPENING COMMENTS OF SENATOR SHELBY

Senator SHELBY. Thank you, Mr. Chairman.

Mrs. Williams, I want to again go back to the scrap book, or the diary, or whatever—I think Mr. Altman called it a scrap book but it looks like a diary to me—that you are very familiar with. We are all familiar with it, and that you have been asked about.

This has caught my attention and a lot of the other people's.

It says that on 1-11-94, the entry, "on Whitewater Maggie told me that HRC" that is Hillary Rodham Clinton "was 'paralyzed'" that was a descriptive word "paralyzed by it. If we don't solve this within the next two days, you don't have to worry about her schedule on Health Care."

And then down a little further: "HRC" Hillary Rodham Clinton, "doesn't want the Counsel poking into 20 years of public life in Arkansas."

Let's go back to the word "paralyzed." That is a strong word. It is descriptive.

You have known Roger Altman how long?

Ms. WILLIAMS. When I came to the White House in January of 1994. I don't remember meeting Roger right away, and maybe in February or March of—I'm sorry, of 1993, excuse me.

Senator SHELBY. March 1993?

Ms. WILLIAMS. Perhaps.

Senator SHELBY. Had you dealt with him on more than this one occasion?

Ms. WILLIAMS. Yes, I have.

Senator SHELBY. About how many times, in your best judgment, have you met and talked and dealt with Roger Altman?

Ms. WILLIAMS. Well, quite a bit.

Senator SHELBY. From 1993 on? Would it be as many as, say, 10 or 15 times?

Ms. WILLIAMS. Yes.

Senator SHELBY. More or less?

Ms. WILLIAMS. It could be, yes.

Senator SHELBY. And were those meetings or dealings about various things dealing with the Administration?

Ms. WILLIAMS. Generally our meetings were Health Care related.

Senator SHELBY. Health Care related?

Ms. WILLIAMS. Yes, sir.

Senator SHELBY. The word "paralyzed"—and he is quoting that and attributing that to you. Do you believe that Roger Altman is an intelligent man?

Ms. WILLIAMS. Yes, I do.

Senator SHELBY. I think we would stipulate that.

Do you know whether he has ever attributed, done an attribution to you or something else that was not true?

Ms. WILLIAMS. I do not know if he has done an attribution about me to someone else. I do not know that.

Senator SHELBY. Have you used the word "paralyzed" in the context of a conversation with him? Did you, on this occasion?

Ms. WILLIAMS. No, I did not, because I do not recall having a conversation with Mr. Altman.

Second, because—

Senator SHELBY. You don't recall at all having a conversation with him on this occasion?

Ms. WILLIAMS. I do not, sir.

Senator SHELBY. OK. Could you have had a conversation and not recalled it?

Could there have been a conversation like this and you not recall it for various and sundry reasons?



Ms. WILLIAMS. I think that it is possible for a person not to have recalled it. I don't know if anyone here can recall every conversation they had on January whatever the date is, but I will say that what you do when you are trying to make a recollection, I believe, is you try and think about yourself. What would you do? What would you say?

It gives you some sense about whether or not in an instance you would say that.

I would not say that Mrs. Clinton is "paralyzed," one, because it just was not true. I look at her schedule. If this is the schedule of a "paralyzed" person, then she is in very good shape.

Secondly, I would not discuss Mrs. Clinton's state of mind with anyone. That is what I know to be true about me.

Senator SHELBY. Would you say, in describing the situation, if you do not want to claim ownership of the word "paralyzed" here, would you say she was deeply concerned?

Ms. WILLIAMS. Let me say that it would be unusual for a person who every day in the press was getting beaten up about a specific subject and a person who had to spend part of her time engaged in discussions with a private lawyer about things that happened 17 years ago, for this person not to be concerned.

Senator SHELBY. "Deeply"? Deeply concerned?

That is my phrase.

Ms. WILLIAMS. Mrs. Clinton did not express that to me, but I would have to be a blind person not to look at what was going on in the media and not to look at the time that she was spending with her personal lawyer not to know that this matter held some real interest for her.

But let me go back to what I believe your question is. I do not recall having a conversation with Mr. Altman where I indicated that Mrs. Clinton was "paralyzed," for two reasons, and I will repeat them.

One, it is not true she was paralyzed.

Second, I know myself and I would not discuss Mrs. Clinton's state of mind.

Now what I have volunteered to this Committee and to the House Committee is that during that period of time I certainly was outspoken in saying that I believed Whitewater was a distraction and that we needed to be about the business of the President's agenda.

That is what I said.

Senator SHELBY. If you didn't say that, or you have no recollection of saying that, or using that period, then do you believe that Roger Altman made this up and contemporaneously put it in his diary or scrap book?

That would be sort of out of character for anyone would it not, to make up something like this that would be descriptive of what was going on, for example, at their house at that time, or his impression that he gathered from your conversation and write it down, put it in his diary or his scrapbook?

Would that not be out of character for somebody to just make up something like that—

Ms. WILLIAMS. Well, Senator Shelby—

Senator SHELBY [continuing]. Not thinking it would ever be coming up before the Senate Banking Committee?

Ms. WILLIAMS. Well, Senator Shelby, I cannot speak to what it was that Mr. Altman was doing, but I can speak to what I was saying, what I was doing, what I normally would not do. That is what I can speak to, my recollections, and I can speak to only my recollections.

Senator SHELBY. Yes, ma'am, but you did say a few minutes ago that you had met and conferred with Mr. Altman on as many as 10, 15 occasions, mainly dealing in the Health Care area?

Ms. WILLIAMS. Yes, sir. That's correct.

Senator SHELBY. So if he is recording this in his diary describing what was going on at the White House with Mrs. Clinton from what he perceived or what he picked up from you, and it was in the subject area of Health Care, it would be in keeping with his meetings with you, would it not—the subject of Health Care?

Ms. WILLIAMS. The subject of Health Care?

Senator SHELBY. Sure.

Ms. WILLIAMS. Yes.

Senator SHELBY. In other words, this was in the context of Health Care.

"On Whitewater, Maggie told me that Hillary Rodham Clinton was paralyzed by it. If we don't solve this within the next two days, you don't have to worry about her schedule on Health Care" and so forth.

In other words, the context of your conversation generally with him was Health Care.

Ms. WILLIAMS. Yes, sir.

Senator SHELBY. And how it would affect, or how other things could affect the campaign for it.

Ms. WILLIAMS. Sir, I understand your question. I understand the logic of it. But that does not change my testimony with respect to my recollection of what took place.

Senator SHELBY. Do you ever recall—or if you don't recall, is this phrase here, this sentence in keeping with something you may have said, that "HRC," Hillary Rodham Clinton, "doesn't want the Counsel poking into 20 years of public life in Arkansas"?

Have you ever said, if not that, something like that?

Ms. WILLIAMS. What I have said—

Senator SHELBY. Something he could interpret like that?

Ms. WILLIAMS. What I have said, as I said before the House Committee, was that I have said that I believed that 17 years of Arkansas history was irrelevant to the President's agenda.

That is what I have said.

Senator SHELBY. So that he could have picked that up from what you said and written what he had in the diary.

Ms. WILLIAMS. Sir, I am sorry; I really refuse to speculate as to how Mr. Altman arrived at that.

Senator SHELBY. Well I will leave it up to the Committee. I mean, what you said referred to 17 years of Arkansas politics. We understand that.

Then if he says HRC does not want Counsel poking into 20 years of public life, that is not far off. The sentences are not far off.

My time is up.

The CHAIRMAN. Thank you.  
Senator Roth.

#### OPENING COMMENTS OF SENATOR ROTH

Senator ROTH. Mr. McLarty, yesterday I tried to ask a number of the members of the White House Counsel's staff about a telephone call that George Stephanopoulos made to Josh Steiner in the Treasury Department on February 25, 1994, and whether it violated White House Ethics Guidelines prohibiting contact by White House staff with investigative agencies on pending cases.

I was not successful in getting anyone to answer my question, so I would like to pose the same question to you.

First, do you agree that the Nussbaum memorandum of February 22, 1993, prohibited White House staff contacts with investigative agencies, including Treasury, about pending investigations on specific cases?

Mr. McLARTY. I think the memoranda that you are referring to, Senator, outlines written or oral communications concerning pending investigations must be directed through the Counsel's Office.

Senator ROTH. Yes. And there is no exception in that guideline, is there, on that matter?

Mr. McLARTY. Without reading it closely, I am not aware of any exception. I think it speaks for itself here.

Senator ROTH. Are you aware that George Stephanopoulos called Josh Steiner, the Chief of Staff at Treasury, and complained about the hiring of Jay Stephens as Counsel on the Madison Guaranty case?

Mr. McLARTY. I am aware that Mr. Stephanopoulos called Mr. Steiner on February 25th.

Senator ROTH. In fact, you talked to Stephanopoulos sometime after the call.

In your deposition you testified that at a later time you asked Mr. Cutler to review this matter from the Counsel's Office.

Is this correct?

Mr. McLARTY. Yes, sir, it is. I asked Mr. Cutler, as I said in my opening comments, to review these matters thoroughly, which he has done.

Senator ROTH. Was that because you felt that the very first call that was made might have violated the Nussbaum ethics memo?

Mr. McLARTY. The very first call that was made, Senator?

Would you please clarify that?

Senator ROTH. Well when Stephanopoulos called Josh Steiner.

Mr. McLARTY. No. I asked Mr. Cutler to review all of the contacts as White House Counsel, which he has done.

Senator ROTH. Because you felt there was a question as to whether they were in accord with the Nussbaum memorandum?

Mr. McLARTY. Well I think in a broader sense they have become a matter of public inquiry, much like Secretary Bentsen directed the Office of Government Ethics and the Treasury.

I followed a similar approach in the White House for Mr. Cutler coming aboard.

Senator ROTH. Do you feel that kind of contact raised a question of violating the Nussbaum memorandum?

Mr. McLARTY. It could have. And of course Mr. Cutler, Senator, as you know has rendered his report, as have the Office of Government Ethics, and Mr. Cutler will be here Friday, but I think Mr. Cutler concludes that this contact was understandable and no ethical impropriety was involved.

That was his conclusion. And I believe the Office of Government Ethics reaches a similar conclusion in their report.

Senator ROTH. How do you reconcile that with the memo which clearly states that any such contact should be made through the Office of the White House Counsel rather than from staff to staff?

Does that not on the surface appear to be in conflict with the purpose of the Nussbaum memorandum?

Mr. McLARTY. Senator, your point is well made, that any contacts with regulatory agencies that might be perceived as a contact regarding a matter under review or investigation, as Mr. Cutler did point out in his report, should be channeled through the White House Counsel's Office and, even better, as I said again in my opening comments, channeled Counsel to Counsel.

I would note that most of the contacts did have White House Counsel involved, and many of course, as Senator Bryan or someone had suggested, were initiated by people at the Treasury.

Senator ROTH. Now there was a similar joint call by Harold Ickes and George Stephanopoulos to Roger Altman at Treasury on February 25, 1994, complaining about the Stephens appointment.

Does that not raise the same ethical question under the Nussbaum guideline?

Mr. McLARTY. I believe that call was perhaps about the manner that Mr. Altman had chosen to recuse himself, Senator, if I understand the facts correctly.

Senator ROTH. But the purpose of the Nussbaum memorandum was to be a guideline for all contacts between the White House and agencies where there were investigative, adjudicative, and similar regulatory matters before them, was it not?

Mr. McLARTY. That is correct, Senator.

Senator ROTH. Now I would like to turn briefly to another question.

There has been a lot of talk about something called a "de facto recusal" by Roger Altman in the Madison Guaranty case.

Now it is my understanding, Mr. McLarty, you recused yourself from dealing with any issue since coming to Washington from Arkansas—or let me put it this way.

It is my understanding that during the Presidential transition you recused yourself from all RTC issues because your former company, Arkla, was a defendant in an RTC lawsuit? Is that correct?

Mr. McLARTY. That is correct, Senator.

Senator ROTH. Did you recuse yourself through a letter or some other formal process?

Mr. McLARTY. I believe the process was in your filing with the Office of Government Ethics, if I recall, as part of your filing there. I believe it is a recusal letter; I am not sure of the specifics, but I believe that's the process.

Senator ROTH. And you did issue such a letter?

Mr. McLARTY. Yes. It is my understanding I did.

Senator DODD. Would my colleague yield on that for just that one point, Bill?

Senator ROTH. Sure. Without losing my time.

Senator DODD. That was on a personal—you were personally—you were the chief executive officer of Arkla, if I am not mistaken. What was your capacity?

Mr. McLARTY. That is correct.

Senator DODD. So you had a personal involvement with that particular matter before the RTC?

Mr. McLARTY. Well it was not personal. The company was part of the litigation and I felt I should recuse, and I took that step, as well as other recusals, under full disclosure. I think that is part of serving in a public position.

Senator DODD. I appreciate that.

Senator ROTH. If I could continue, are you still recused?

Mr. McLARTY. Yes, sir, I am. I have not participated in any matter, or in any way tried to influence or affect any RTC decision, Senator.

Senator ROTH. In other words, let me ask you, while you are recused, you have received no briefings, or given briefings about the RTC? Did you make telephone calls about the RTC, or participate in discussions about the subject?

In other words, is not the whole point about a recusal that you completely stay away from the whole subject so that you will not be accused of influencing the process or decisionmaking?

Mr. McLARTY. I have not made any telephone calls. I have not participated, as I said, in any way in an RTC matter.

I have been kept apprised of just the general appointments' process by others responsible for all positions in Government, but I have not participated or interviewed anyone in connection with the RTC.

Senator ROTH. What about Madison Guaranty?

Mr. McLARTY. No, sir, I have not.

Senator ROTH. When you recuse yourself you do not say that you will take part in the process but follow someone else's recommendations when you make the final decision?

Is that correct?

Mr. McLARTY. Well, Senator, you brought up the matter of this "de facto recusal," which I certainly have not studied and am not an expert on. I think quite a bit of commentary and testimony was given on that yesterday by Mr. Klein—who I thought—I understood was quite eloquent—and others.

I understand your points about recusal, and my understanding in my recusal letter was that I would recuse from any matters, and I have done that.

Senator ROTH. My point is that "de facto recusal" really has no real significance.

Mr. McLARTY. Well, Senator, again I have already said that I am not an expert on this matter.

The matter you are referring to, Mr. Altman's situation, was and is very different than mine. I am trying to be responsive to your question.

Senator ROTH. I appreciate that.

Mr. McLARTY. Thank you.

The CHAIRMAN. Thank you.

Senator ROTH. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Roth.

Senator Boxer of California.

#### OPENING COMMENTS OF SENATOR BOXER

Senator BOXER. Thanks, Mr. Chairman.

Ms. Williams, Senator Bennett warned you. He cautioned you about Rush Limbaugh mousetrapping you. I just want to tell you: Do not worry about what Rush Limbaugh says. Just do your job just like you said you would do during this whole time.

I think you were exactly right. We were sent here to do a job for the American people. So do not worry about what a press personality says about you.

Secondly, Senator Shelby said that Mrs. Clinton did not want a Special Counsel poking into 20 years of public life in Arkansas, and that is what he quoted Mr. Altman as saying.

Let me tell you, I read that in the paper. I read that Mrs. Clinton said that she was very concerned about her private life being looked at over the past 20 years. So I do not think that is any great revelation.

I do not think anyone on this Committee particularly would relish that kind of situation—even those who lecture here about ethics.

So the bottom line is: I do not think anybody should be Holier than Thou, because I think it is quite a human emotion to say that you do not want someone looking at 20 years of your private life.

I think that is human.

Now maybe a lot of people would not say it, but I think everybody feels the same way about that.

I want to talk about this recusal issue and get back to the diary that has become—Mr. Steiner's diary—kind of the central "evidence" in this hearing, which sometimes I think is like a trial.

I believe that it was inappropriate for White House officials to express a view regarding the recusal of Mr. Altman, so I must put that on the table, Ms. Williams and Mr. McLarty, and to all of those who expressed this view, I think it was inappropriate—although, the truth is, Mr. Altman could discuss that issue with anyone that he wanted. That is my understanding of the law. It was perfectly fine. He could discuss it with anyone.

But again we are looking at the atmosphere under which this conversation took place, which was described in Mr. Steiner's diary as "intense pressure."

Now I am trying to ask about people who were at the meeting, because we are trying to put ourselves at that meeting.

Mr. Steiner was not at the meeting.

He keeps being quoted as if he was there.

You were there.

Mr. Eggleston was there.

Mr. Eggleston got complimented by almost everyone. He said he would not characterize it as intense pressure. My recollection from last night—and I think it is pretty sound—is that there were a lot of questions raised, and Mr. Nussbaum was not in a happy mood about it.

Is that your recollection of what happened during that period?

I know you said you tuned out at a certain point. I think it would be kind of hard to tune out if Mr. Nussbaum had thrown a fit about the situation, but you tuned out.

What do you remember, again, concisely? Would you say that you exerted intense pressure on Mr. Altman?

Ms. WILLIAMS. No, I did not exert pressure on Mr. Altman. I asked him a question.

Senator BOXER. Now, Mr. McLarty, you were the Chief of Staff to the President of the United States of America.

I have worked with you, and I know that when you wanted to make an opinion known to me you had your way of getting to the point and doing it.

Now Mr. Steiner said that Mr. Altman was under intense pressure from the White House. Surely as Chief of Staff of the White House, if anyone represented "the White House," or "the President" in my mind it was you, more so than anybody else.

Did you put intense pressure on Mr. Altman to recuse himself?

Mr. McLARTY. No, Senator Boxer, I did not.

Senator BOXER. What did you say to Mr. Altman when he told you he was thinking about recusing himself?

Mr. McLARTY. I told him to make the—my advice to him was to make the judgment he thought was the right one.

Senator BOXER. So you said, "Make the judgment you think is the right one," and Mr. Steiner writes that Mr. Altman was under intense pressure from the White House.

I have never known you as a man to be dishonest. Do you have any reservation about what you told Mr. Altman? Do you remember it clearly that that is what you said?

Mr. McLARTY. Yes, Senator, I remember it clearly. In my mind there was no way that Mr. Altman could have interpreted anything I said as any kind of pressure about his decision.

Senator BOXER. And you were Chief of Staff to the President of the United States at that time.

Mr. McLARTY. At that time I had the privilege to serve in that position.

Senator BOXER. Now do you think Roger Altman, Mr. McLarty, is the type of man who could be easily intimidated?

Mr. McLARTY. No, I do not.

Senator BOXER. Ms. Williams, is your impression of Mr. Altman that he is kind of a weak-kneed guy who has not been around the block a few times?

Or is this a man who has had some experience?

Ms. WILLIAMS. That would be my impression of Mr. Altman, someone who had some experience.

Senator BOXER. OK.

Well I think it is very important that this Committee, before it hangs someone on the basis of a diary, listen to the people who were involved in the discussion directly. I think that is the least that this Committee can do before we go out and make our pronouncements as to what we think went on.

Mr. McLarty, in retrospect do you think it would have been better if all the questions on Whitewater and Madison Guaranty had been handled in a different way?

Mr. McLARTY. Oh, I think hindsight is always helpful in any decision, and I think the contacts could have been more clearly channeled through the White House Counsel's Office, in retrospect.

Senator BOXER. Or perhaps, in my view, not gone to the White House at all. I mean, that is something—

Mr. McLARTY. I think I said that in my opening statement, that in retrospect there were some things that you would have certainly tried to do differently.

Senator BOXER. Mr. McLarty, did the President or the First Lady ever ask you to slow down the Whitewater investigation in any way?

Mr. McLARTY. No, they did not.

Senator BOXER. Did the President or the First Lady ever ask you to beg Mr. Altman or ask Mr. Altman or exert pressure on Mr. Altman to stay in his position so that Whitewater would go away and not be an issue?

Mr. McLARTY. No, they did not beg me or ask me to do that.

Senator BOXER. Ms. Williams, as Assistant to the President, did he ever discuss this matter with you and urge you to do all you could do to convince Mr. Altman not to recuse himself and to go easy on the Whitewater matter?

Ms. WILLIAMS. No, Senator.

Senator BOXER. Did the First Lady ever entreaty you in such a fashion?

Ms. WILLIAMS. No, Senator.

Senator BOXER. Well, Mr. Chairman, I am not going to use up all my time, but I have to say this to the two of you:

I think that you are really good public servants. I have never really talked to you before. But I want to say to you that your strong focus and your strong purpose on what you are in your job comes through to me, and I think you served the First Lady well, the President well, and the country well.

And I do wish—I do wish—that everyone else in the Administration had that focus. Because, had they had that focus, I do not think we would be here right now.

Thank you.

The CHAIRMAN. Thank you, Senator Boxer.

Senator Hatch.

#### OPENING COMMENTS OF SENATOR HATCH

Senator HATCH. Thank you, Mr. Chairman.

Mr. McLarty, welcome. It is good to see you and Ms. Williams.

Mr. McLARTY. Good morning, Senator Hatch.

Senator HATCH. Mr. McLarty, do you know of any communications between the White House staff and the Department of Justice concerning the scope of the Independent Counsel's charter?

Mr. McLARTY. No, I do not.

Senator HATCH. In your prepared testimony you stated that "no one" attempted to influence the RTC's decision on whether or when to bring claims against individuals with regard to the failure of Madison.

Would an attempt by the White House or Treasury staff to shift civil jurisdiction from RTC and give it to the Independent Counsel,



were it to have occurred, in your view qualify as “an attempt to influence the RTC’s decision”?

Mr. McLARTY. Well, Senator, my statement was I am not aware of any efforts on the part of the White House to influence an RTC decision. And it is my understanding that other career members of the RTC have expressed a similar view.

Senator HATCH. I understand you are not aware of it, but if that actually happened would that qualify as an attempt to influence—

Mr. McLARTY. I do not know, Senator, that it would, but to the best of my knowledge it has not happened.

Senator HATCH. OK.

Ms. Williams, let me spend a few minutes with you. OK?

Your position is Assistant to the President and Chief of Staff to the First Lady?

Ms. WILLIAMS. Yes, Senator.

Senator HATCH. In this position, you attend all senior staff meetings, right?

Ms. WILLIAMS. Some.

Senator HATCH. As many as you can?

Ms. WILLIAMS. Yes.

Senator HATCH. “All” may be too all inclusive.

You came to Washington after having worked for Mrs. Clinton. I think you were with the Children’s Defense Fund, as well?

Ms. WILLIAMS. Yes, sir. That is correct.

Senator HATCH. I have a lot of respect for them, as you know.

How long did you work for Mrs. Clinton before you came to Washington?

Ms. WILLIAMS. From September to December.

Senator HATCH. Let me turn to Mr. Altman’s diary for a few minutes. You are familiar with those entries?

Ms. WILLIAMS. Yes, sir, I am.

Senator HATCH. In fact, Mr. Cutler, the White House Counsel, asked you about those diary entries prior to your deposition before this Committee?

Ms. WILLIAMS. Yes, sir.

Senator HATCH. You were provided a copy of those diary entries?

Ms. WILLIAMS. I was provided—

Senator HATCH. In other words, prior to your deposition, I guess?

Ms. WILLIAMS. Prior to my deposition.

Senator HATCH. Right.

In fact, Mr. Altman provided you with a copy, did he not?

Ms. WILLIAMS. Yes, he did.

Senator HATCH. OK. When we deposed Mr. Altman, he explained that the reason he gave you a copy is because he felt “badly” about providing the Committee with copies.

Is that your recollection?

Ms. WILLIAMS. Of Mr. Altman’s testimony?

Senator HATCH. Well, that he felt badly that he had provided the Committee with copies.

I guess what I am asking you is: What would Mr. Altman have felt badly about, if you know?

Ms. WILLIAMS. I am not sure I quite understand this question.

Senator HATCH. Well when we deposed him, he said he felt badly about providing the Committee with copies, and that is why he provided you with one.

I was just wondering if you knew why he would feel badly about that.

Ms. WILLIAMS. About providing the Committee with copies?

Senator HATCH. Right.

Ms. WILLIAMS. No, I do not know why he felt badly about that.

Senator HATCH. Could you see where providing you a copy of the diary entries could be seen as another one of Mr. Altman's famous "heads up" decisions?

Ms. WILLIAMS. Well I did not necessarily view it in that context because Mr. Cutler had earlier asked me questions about the diary, which was the first time I ever heard about it.

Senator HATCH. All right.

During your deposition when you were asked about being provided a copy of the diary entry, you did not inform the Committee that Mr. Altman had provided you with a copy.

Right?

Ms. WILLIAMS. I did not, but let me say, having reviewed my deposition, that the questions as I recall did not make it necessary at that time.

The way the questions were being asked, it was: Who was the first person to inform you?

And then later questions were: Who read you the copies of the diary?

So, I did not.

Senator HATCH. And in fact when you were asked by the Committee if you "had any idea" where the diary pages your attorney had came from, your response was "I have no idea."

Ms. WILLIAMS. That is still correct, because my attorney did not receive copies of Mr. Altman's diary from me.

Senator HATCH. Well, but the important point is that you had an opportunity to review those diary entries prior to your deposition, and that they were provided to you by Mr. Altman.

Right?

Ms. WILLIAMS. Well, I believe the point is twofold, actually.

Mr. Cutler first asked me about the diaries, and I gave him my answers about whether or not I knew about them, whether or not anything in them rung true to me, or if I could recall any of those conversations.

Senator HATCH. So you discussed the diary entries with Mr. Cutler, then?

Ms. WILLIAMS. Mr. Cutler discussed them with me, that is correct.

Senator HATCH. Now, I would like to read some of the Altman diary dated January 11th, the day before President Clinton requested that an Independent Counsel be named.

He goes on to say, "Maggie's strong inference was that the White House was trying to negotiate the scope of an Independent Counsel with Reno, and having enormous difficulties."

HRC "doesn't want the Counsel poking around in the twenty years of public life in Arkansas."

Mr. Altman has testified—you are familiar with that diary entry?

Ms. WILLIAMS. Yes, sir, I am.

Senator HATCH. He has testified both at his deposition, and before the Committee that his reference to Maggie is you. He testified that he only wrote what he thought to be of "historical value," and which he believed to be true.

He also testified further that these entries were made after a January 11th Health Care meeting he had with you.

Now regarding the entry which discusses the White House negotiations with Attorney General Reno, you testified during your deposition that you "didn't know anything about" the entry.

Do you remember that?

Ms. WILLIAMS. That is correct.

Senator HATCH. You do not recall any communication which took place at a Health Care meeting where you may have mentioned Attorney General Reno or the Independent Counsel.

Is that what you are basically saying?

Ms. WILLIAMS. Yes, sir, that is my testimony.

Senator HATCH. Now you have no knowledge of any White House discussions with the Department of Justice concerning the Independent Counsel either?

Ms. WILLIAMS. Absolutely not.

Senator HATCH. Do you have any knowledge of any discussions by the Clinton's or their attorneys concerning the scope of the Independent Counsel's charter?

Ms. WILLIAMS. No, sir, I do not have any knowledge of that.

Senator HATCH. You also testified that you did not have any discussions with the First Lady about the scope of the Independent Counsel charter.

Is that correct?

Ms. WILLIAMS. No, sir. I would not have.

Senator HATCH. You mean that is correct?

Ms. WILLIAMS. That is correct, yes, sir.

Senator HATCH. Did you have any discussions with anyone in the White House concerning the scope—discussions with anybody in the White House concerning the scope of the Independent Counsel charter?

Ms. WILLIAMS. No, sir, not concerning the scope of the Independent Counsel.

I will say that there was a lot of debate, both inside the White House and also in the press and public and even on the Hill, every day about should there be an Independent Counsel, should there not be an Independent Counsel, and I am sure that I was involved in conversations about whether or not there should be or should not be.

Senator HATCH. OK. So to this day, you have no idea why Mr. Altman may have gotten the idea from you that the White House was trying to negotiate the scope of the Independent Counsel with the Justice Department.

Is that right?

Ms. WILLIAMS. That is correct, sir.

And let me add additionally, one of the things I recall was that the main thing that people were saying was that whatever the decision, it would be a Justice Department decision. That, whatever

you do, do not talk to the Justice Department. Just go on with your work.

Senator HATCH. Well, I think that is all, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Hatch.

Senator Campbell.

#### OPENING COMMENTS OF SENATOR CAMPBELL

Senator CAMPBELL. Thank you, Mr. Chairman.

We have been in here 4 days now, and about half the time it seems to me, I would describe it as trolling, hoping somebody would run into a hook.

So I want to try to keep my questions very to the point and very simple.

But I might make one observation. I was listening with interest when Senator Kerry was asking some questions, and he inadvertently made a mistake on one of the meeting times and you were very quick to correct the record, good thinking.

As you probably know, if you wait a couple weeks to correct around here, it is pretty risky. [Laughter.]

Mr. McLARTY. Thank you, Senator.

Senator CAMPBELL. Let me ask you a little bit about this so-called response team.

Is that still in effect?

Is there still a response team?

Ms. WILLIAMS. No, there is not.

Senator CAMPBELL. There is not.

It was put together primarily to deal with press concerns?

Mr. McLARTY. That is correct. Right after the first of the year, there was quite a bit of interest, press inquiry allegations, many without any kind of factual basis whatsoever about the Whitewater/Madison Guaranty matter, and we simply wanted these coordinated in the White House and that is why I asked Mr. Ickes to take on that responsibility, to assume that responsibility.

Ms. WILLIAMS. Senator Campbell, may I add to that that Mr. McLarty generally, as a way of dealing with situations where there is a lot of press interest, will put together White House response teams. This was not an unusual method of working, getting people together.

Senator CAMPBELL. That is a normal process and you have done it before?

Ms. WILLIAMS. On different issues, yes.

Senator CAMPBELL. On different things, OK.

Mr. McLarty, you apparently ordered your staff, i.e., Mr. Podesta to work with the Treasury people to prepare Roger Altman for the February 24th Senate hearing.

The newspapers, at least one account I read, indicated that you did not want them to concentrate solely on Whitewater.

Was there anything to that?

Mr. McLARTY. We wanted the hearings to cover the scope that this Committee felt was proper. There was a lot going on and we did not think it was proper for the hearings to be based on a very narrow issue and that to dominate the hearings.

The RTC was performing quite well in their activities. This was to be a regularly scheduled hearing and we wanted it to be a broad

and full hearing, and not a forum for allegations and questions about Whitewater. We did not think that that was the right focus of this meeting.

Senator CAMPBELL. Did you have any role in the correction of the record after his testimony?

Mr. McLARTY. I have already testified, Senator, that when the matter was brought to my attention that Mr. Altman's testimony might not be complete, it was recommended to me, when it was brought to my attention, that we work with Treasury to get the record complete if it needed supplementing, and Mr. Podesta followed on that.

Senator CAMPBELL. Did you talk to him personally about it?

Mr. McLARTY. No, I did not.

Senator CAMPBELL. To his staff?

Mr. McLARTY. No, I did not.

Senator CAMPBELL. Is it normal that your staff would work with any Secretary's staff in developing testimony? Normally they develop their own, do they not?

Mr. McLARTY. I have testified to that earlier, Senator. Normally, a Cabinet Secretary or Deputy Secretary offering testimony will be the primary or accept the primary responsibility for it, but it is not unusual for our Congressional Affairs personnel to be aware of that testimony before various Committees before the House or the Senate.

Senator CAMPBELL. Thank you.

Now, Maggie, one of the previous witnesses testified that when Mr. Altman stopped by, I believe it was February 3rd, to say that he would not recuse himself, that there were not any questions asked. Nobody seemed particularly surprised. He only stayed there a few seconds and left.

Is that your recollection?

Ms. WILLIAMS. That is my recollection, sir.

Senator CAMPBELL. That is all I need, Mr. Chairman. Thanks.

The CHAIRMAN. Thank you, Senator Campbell.

Senator D'Amato, your side is next. We have got two Members left to go in the first round here. Do you want to go next, or—

Senator D'AMATO. I would like to, Mr. Chairman, because I want to pursue something that Senator Hatch—

Senator DODD. Mr. Chairman, would you, just out of curiosity, I mean, when Senators have not had a chance at all, should we not try to accommodate those people who have not had even a first round before any of us go to a second round?

Senator D'AMATO. Well, let me say that in the division of time, I had suggested earlier that we would have equal time, that we enter into an agreement to do that. The Chairman did not think we could do that. However, he agreed to 7 minutes for each side.

And it is now time for our side.

Senator DODD. No, I understand that. I just thought of the people that have not had a chance. That is all.

Senator D'AMATO. Again, we are limited in time scope. It is not out of a lack of deference or consideration for my colleagues, but what will take place is, at the end, we will wind up with us having to ask more and more and more of these questions.

I would like to try to get time to raise questions.

And I would be happy to yield to my colleague at this time, but then I would like us to start.

Senator DODD. Go ahead.

Senator D'AMATO. I will yield to my colleague.

Senator MOSELEY-BRAUN. Thank you, Senator D'Amato, but I think I am prepared to follow the Chairman's judgment in this regard, because of scheduling or whatever it is, that is fine with me.

Senator D'AMATO. No, that is quite all right. We do need harmony here and I want to extend it. I am happy to extend the time.

The CHAIRMAN. Well, Senator Moseley-Braun appreciates that. She is prepared to wait.

Senator D'AMATO. I would, to my colleagues——

Senator DODD. Why don't we adjourn the hearing?

Senator D'AMATO. Senator Murray? Senator Murray?

The CHAIRMAN. Senator Murray, do you want to go now?

Senator MURRAY. No, go ahead.

The CHAIRMAN. All right.

Senator DODD. I am sorry I brought it up.

Senator MURRAY. No, we appreciate it, Senator Dodd, and your point is very well taken and it was very thoughtful and sensitive of you to mention that, but at the same time, I think in the interests of making certain that these hearings go along with the Chairman's direction, I would just as soon wait.

The CHAIRMAN. We are looking down at that end of the table. Senator Sasser has not had an opportunity either yet, Senator D'Amato.

Senator SASSER. Well, Mr. Chairman, I will be pleased to take advantage of Senator D'Amato's generosity if he wishes to yield to me.

Senator D'AMATO. Fine.

The CHAIRMAN. He is prepared to do so.

Senator Sasser.

#### OPENING COMMENTS OF SENATOR SASSER

Senator SASSER. I thank the Senator.

Ms. Williams, I think perhaps Senator Dodd may have asked you this question impinging on this a little earlier, but in the meeting on February 2nd that took place, I think, in Mr. McLarty's office, if I'm not mistaken, did Mr. Altman there at that time inform the participants at the February 2nd meeting with regard to Madison Savings that "it is unlikely that the investigation could be completed and a recommendation made by the General Counsel . . ." that is, General Counsel of the RTC, ". . . prior to the expiration of the statute of limitations."

In other words, did he in essence say that we cannot complete the investigation at the RTC prior to the statute expiring?

Ms. WILLIAMS. I do not remember him saying that, sir.

Senator SASSER. So you have no independent recollection of whether he said that or not?

Ms. WILLIAMS. No, sir.

Senator SASSER. So if Mr. Ickes said he did say it, you would not be in a position to refute him, would you?

Ms. WILLIAMS. No, sir.

Senator SASSER. And conversely, if Mr. Altman said he did not say it, you would not be in a position to contradict him either?

Ms. WILLIAMS. No, sir.

Senator SASSER. You just do not recall it?

Ms. WILLIAMS. I do not recall it.

Senator SASSER. Are you a lawyer by training, Ms. Williams?

Ms. WILLIAMS. No, I am not a lawyer.

Senator SASSER. Well, I can understand why the question of the statute of limitations might not have had that much relevance to you then.

Now, Mr. McLarty, Senator Sarbanes was asking you earlier about the meeting in your office.

Would you care to expand on why your office invited Ms. Williams to the February 2nd meeting at all?

Mr. McLARTY. Senator Sasser, when Mr. Altman requested this meeting, Mr. Ickes and Mr. Nussbaum were the proper people to coordinate such a meeting, which they did, and I think Mr. Ickes suggested certain people attend from my office, and I think he was correct in that.

And Ms. Williams has already testified, one, as to her broad and very capable role in the White House, and secondly, the fact that this matter had to do with the First Family and all of the criticisms, particularly of the First Lady about this matter, so I think it was quite understandable and quite proper that she attend such a meeting.

Senator SASSER. Now with regard to the February 2nd meeting that took place in your office, and according to Mr. Altman, you arranged for the meeting, but you, yourself, did not attend.

Is that an accurate representation, that you arranged for the meeting?

Mr. McLARTY. Senator, I just commented that when Mr. Altman called and asked for this meeting, I delegated the matter to Mr. Ickes. I am not sure that Mr. Altman did talk to me. He did talk to my office, I think, and that is how the matter was handled.

Senator SASSER. Did you ever plan to attend the meeting that took place on February 2nd?

Mr. McLARTY. I was aware the meeting was going to take place. Mr. Ickes had informed me of that, and I may well have attended, but I had another meeting that was with a congressional delegation on a very important legislative issue, and as often is the case in the White House, you have to make choices about which meetings you attend, and I attended the congressional meeting.

Senator SASSER. So you might have attended had there not been another conflicting meeting?

Mr. McLARTY. I might have. I was aware of the meeting.

Senator SASSER. Let me ask you this, Mr. McLarty.

Did the President or the First Lady ask you to set up this meeting on February 2nd?

Mr. McLARTY. No, they did not, Senator.

Senator SASSER. Did you ever have any communications about setting up this meeting with either the President or the First Lady?

Mr. McLARTY. No, Senator, I did not.

Senator SASSER. Did Senator Bentsen ask you to set up this February 2nd meeting, or any similar meeting on the question of Madison?

Mr. McLARTY. No, Senator, he did not.

Senator SASSER. And have you had communications on this whole Madison question with Secretary Bentsen?

Mr. McLARTY. No, Senator, I have not.

Senator SASSER. Mr. Chairman, I am at a posture here where I think I can yield back to Senator D'Amato some of his time, which he so generously yielded to me.

Thank you, Mr. McLarty, and thank you, Ms. Williams.

The CHAIRMAN. Thank you, Senator Sasser.

Senator D'AMATO. Well, Mr. Chairman, if I might suggest, I know a vote has just started. The witnesses have been on the table for about 2½ hours.

Might this be a time, so that we can go down and break, and she might take 15 minutes or so, so that we could vote, and then we will start?

I do not know what the Committee thinks.

The CHAIRMAN. I think that is a good idea.

The vote has started, and so the Committee will recess for about 15 minutes so that we can go and vote, and the witnesses can take a break as well, and then we will resume at approximately 12:30.

The Committee stands in recess.

[Recess.]

The CHAIRMAN. The Committee will come to order. Let me invite everyone to be seated so we can start.

Let me recognize Senator D'Amato.

Senator D'AMATO. Thank you, Mr. Chairman.

Ms. Williams, let me ask you as it relates to the diary of Mr. Altman, did you ever see Altman's diary page?

Ms. WILLIAMS. No, I've not seen the diary page.

Senator D'AMATO. You have never seen the diary page?

Ms. WILLIAMS. I have not read it.

Senator D'AMATO. Well, have you seen it?

Ms. WILLIAMS. I have seen it in the hands of my attorney, the page, but I have not read it. It appeared to be a clump of handwriting, but I did not avail myself of an opportunity to read it.

Senator D'AMATO. Your attorney did not avail you the opportunity to read it?

Ms. WILLIAMS. Oh, he gave me the opportunity. I said I was not interested in reading it.

Senator D'AMATO. OK. Did you ever speak to Roger Altman about his recordings, his diary or the page?

Ms. WILLIAMS. Yes, sir. I did speak with Mr. Altman about his recordings.

Senator D'AMATO. How did that occasion take place, if you can recall?

Ms. WILLIAMS. Mr. Altman called me and said that he wanted to see me.

Senator D'AMATO. He called you and said he wanted to speak to you?

Ms. WILLIAMS. Yes, he did.

Senator D'AMATO. And he wanted to speak to you in person?



Ms. WILLIAMS. Yes, he did.

Senator D'AMATO. And was that sometime in July, the second week of July?

Ms. WILLIAMS. Yes, sir. That seems about right.

Senator D'AMATO. And so he came to see you at the White House?

Ms. WILLIAMS. Yes, sir. That's correct.

Senator D'AMATO. And what did he say to you?

Ms. WILLIAMS. He said that—I'll give you the gist. I don't know exactly, but I'll give you the gist of what he said.

Senator D'AMATO. All right.

Ms. WILLIAMS. Was that I have written some things and I want to tell you about them.

Senator D'AMATO. And what did he say?

Ms. WILLIAMS. And he told me about them.

Senator D'AMATO. What did he say, if you can recall? I mean, now this is—he feels—he's embarrassed. Is that a fair characterization? Did he say he wanted to apologize to you?

Ms. WILLIAMS. Well, I don't want to characterize. I don't remember him saying "apologize." I have to say I was caught up in my own bad attitude.

Senator D'AMATO. OK. What did he say to you and what did you say to him?

Ms. WILLIAMS. I believe what he said to me was I want to tell you about some writings that I have written that have your name in them, and I probably said OK. And I was alerted—I mean, I wasn't totally unaware of this because I'd had a previous conversation with Mr. Cutler who had asked me about them. So I wasn't totally unaware of what he said.

Senator D'AMATO. Mr. Cutler had, in reviewing of the matters that had taken place, gone over this and informed you what the writings were about?

Ms. WILLIAMS. Yes. He did tell me what the writings were about, and he asked me questions about them.

Senator D'AMATO. So now what did Roger say to you?

Ms. WILLIAMS. At that point he said I want to tell you about them, and then he essentially told me what each of the writings or entries had said.

Senator D'AMATO. What the entries were about?

Ms. WILLIAMS. Yes, that's correct.

Senator D'AMATO. The paralysis? What did you say to him?

Ms. WILLIAMS. I said something on the order of Roger, where is this coming from? I don't remember any conversations that I had with you about this.

Senator D'AMATO. And what did he say in response to that?

Ms. WILLIAMS. Well, I believe he was kind of—I believe that he was quiet, quite frankly, about it. As I said before and as I testified before the House Committee, I was having quite a bad attitude about this entire matter, and I was more or less caught up—

Senator D'AMATO. You mean about the diary?

Ms. WILLIAMS. The fact that what had been written about me, to the best of my recollection, there were conversations that never had taken place which would be reflected in his writings. So I was, I was upset.

Senator D'AMATO. At the time of the discussion, did you know that he was scheduled to testify before the Senate? Did he indicate anything to you about that?

Ms. WILLIAMS. No, I don't believe he indicated anything to me about that, but everybody knew he was going to testify before the Senate.

Senator D'AMATO. Let me ask you, didn't he say to you that I brought a copy of this and didn't he in fact bring a copy of the diary, the yellow page diary?

Ms. WILLIAMS. What he brought, and not at that visit, there were two visits. The first was when he talked to me about the diary entries, and then maybe the next day he stopped by and he handed me an envelope that was marked "personal and confidential," and I'm not sure if it was taped in addition to being sealed, but it was sealed.

Senator D'AMATO. And didn't he say to you, I brought a copy of this?

Ms. WILLIAMS. He may have said that.

Senator D'AMATO. Didn't he say to you that the reason he was bringing this to you was because he was going to have to testify before Congress?

Ms. WILLIAMS. I don't remember him saying that exactly, but I wouldn't challenge that if that's his recollection.

Senator D'AMATO. Tell me about the first conversation he had with you; that's when he initially came over to apologize?

Ms. WILLIAMS. Well, that is when he initially came over to tell me about what he had written, yes, sir.

Senator D'AMATO. And was it—how long after that did he come to see you in person? He came, he came over the same day and he told you—he recounted to you the events that you have just described. You said to him basically, what? How did this come about?

Ms. WILLIAMS. Yes. I mean I was upset and I questioned him. I don't know exactly all I said, but it is fair to say that I was upset.

Senator D'AMATO. Now you say there was a second time he came and he had this sealed envelope, and did he say that this is the—my recordings, my writings?

Ms. WILLIAMS. He may have said that, yes.

Senator D'AMATO. I mean, you assumed that this is what he dropped off. Did he tell you he was going to drop it off to you at the first conversation?

Ms. WILLIAMS. I don't recall. He may have. I don't recall, but he may have.

Senator D'AMATO. When did this second visit take place, Ms. Williams?

Ms. WILLIAMS. I believe it was—I want to say it was the day after.

Senator D'AMATO. Shortly after then, a day or—

Ms. WILLIAMS. I don't believe it was the same day. I think it was the next day, perhaps.

Senator D'AMATO. Now, he leaves this envelope with you, sealed. What did you do with the envelope?

Ms. WILLIAMS. I walked into—he gave it to me in the foyer or the vestibule of my office, and I walked into my inner office and I tossed it in the trash.

Senator D'AMATO. Did he say anything to you when he came? Did he just—he just gave you this envelope? Did he say, was it just “here”? Did he say Maggie, this is what I recorded and I wanted you to have it?

Ms. WILLIAMS. I believe he may have said something like that, but I'm not exactly sure, but the envelope was marked “personal and confidential,” and it was sealed, and I believe that my assumption was that this was the——

Senator D'AMATO. You believed it was the recording, the diary. It would make sense. But let me ask you, when he came and spoke to you the first time, did he go over because he didn't have the diary with him then? Obviously he came back the second time to drop it off. Did he talk to you about the specific points? Did he tell you I said, for example, Maggie told me that Hillary Clinton was paralyzed and if we don't solve this within the next 2 days, you're not going to have to worry about a schedule? Did he tell you he said that?

Ms. WILLIAMS. I don't know if he told me that completely since he wasn't reading from anything, he was simply depending on his own recall to tell me, but you have to understand that, having discussed it with Mr. Cutler previously, I had some notion of what it was exactly. So that it could have been a situation where Mr. Altman told me the gist of what he had written and I was mentally filling in some of the gaps.

Senator D'AMATO. Would it be fair for me to ask you to characterize your state of mind at that time? I know if something like this happened to me and I had a confidence, a confidence with a friend or a colleague and they recorded it, you know, we sometimes let whatever hair we have on our head down—you know, I don't have too much, very little—and so we exchange a confidence with a friend that we never believe is going to be seen.

And let's suppose I were talking about something of a personal nature or a governmental nature involving a colleague, and it would be embarrassing, extremely embarrassing to that colleague if this were to be made public. And he comes and says to me, you know, by the way, how could this, you know, this thing become public. My God, I'll tell you something, I would be furious. I would absolutely be furious with that person and the emotions would run—particularly, particularly if he mischaracterized my statements and it turned out to be embarrassing. The emotions would be to throttle him, to do something.

What were your emotions? What did you—after you said that you did not say these things, what were your emotions when he came to see you, you knowing about the gist of this?

Ms. WILLIAMS. I was upset.

Senator D'AMATO. Just upset?

Ms. WILLIAMS. Well, boy, that's a broad range.

Senator D'AMATO. Well, that's what I'd like you to tell us.

The CHAIRMAN. I'm going to let you finish, because we're over. I'm going to give Senator D'Amato as much time as he needs, but I do want to go to Senator Murray. You want to finish and complete the answer?

Senator D'AMATO. You were upset but what did you say to him?

Ms. WILLIAMS. I don't recall everything I said to him because as you know, when you are upset with someone, you're not exactly clear of what you are saying, what comments you are making. Now, I wasn't throwing any chairs so write off that.

Senator D'AMATO. That would be a normal reaction under those circumstances.

Ms. WILLIAMS. Well, not with White House property.

Senator D'AMATO. Well, that's—

The CHAIRMAN. We'll come back to that.

Senator MURRAY.

#### OPENING COMMENT OF SENATOR MURRAY

Senator MURRAY. Thank you, Mr. Chairman. I have to say sitting on this Committee for the last 5 days, I've learned that "seniority" means you speak to empty chairs.

Mr. McLarty, we have heard a lot about this recusal issue over the last 5 days and this Committee has attached a lot of significance to that issue. How much do you think the problem here stemmed from the fact that there was not a separate permanent head of the RTC?

Mr. MCLARTY. Well, I know there's been, or I'm aware there's been a lot of discussion with this Committee which has oversight of the RTC. I think that was a factor in this situation that didn't lend itself to clarity.

Senator MURRAY. You sent a nominee over here, Stanley Tate.

Mr. MCLARTY. We did.

Senator MURRAY. A Republican, and he ultimately withdrew?

Mr. MCLARTY. That's correct, Senator Murray.

Senator MURRAY. Would you have sent a nominee like Stanley Tate, a Republican, if your goal was, as some have suggested here, to be comfortable with the head of the RTC, the person who ultimately would be in charge of the Madison investigation?

Mr. MCLARTY. No—well, I had no involvement in the nomination of Mr. Tate. In all cases the nominee was sent up, thinking he or she would be qualified to serve and would serve in a capable and evenhanded way.

Senator MURRAY. Thank you, Mr. McLarty.

Ms. Williams, I have to say looking at your resume, I'm impressed. Would you consider yourself pretty much an expert in media relations?

Ms. WILLIAMS. I hate to say that I was an expert, but I know a fair amount about the subject.

Senator MURRAY. Well, you're Chief of Staff to the First Lady. You have a master's degree from the Annenberg School. You've been in the field for a long time. So would you say it's fair to say you understand how to work with the media, to communicate to the American people?

Ms. WILLIAMS. I try.

Senator MURRAY. Part of your hectic job, I must say, must be listening to the American people; is that true?

Ms. WILLIAMS. Yes.

Senator MURRAY. So let me ask you this question: In your opinion in February, those few weeks that this Committee has put an

intense light on, were the American people more concerned about Health Care or Whitewater?

Ms. WILLIAMS. I believe they were more concerned about Health Care, which was why I was trying to keep our focus on Health Care.

Senator MURRAY. And was the White House more concerned at that time about Health Care or Whitewater?

Ms. WILLIAMS. Oh, absolutely they were more concerned about Health Care.

Senator MURRAY. In your opinion, today, are people more concerned about Health Care or Whitewater?

Ms. WILLIAMS. In my opinion, I believe people are much more concerned about their Health Care.

Senator MURRAY. And Ms. Williams, can you explain to me, as a taxpayer, is the First Lady now spending more time working on Health Care reform or Whitewater?

Ms. WILLIAMS. She is spending mostly all of her time working on Health Care.

Senator MURRAY. Have you ever seen the First Lady paralyzed?

Ms. WILLIAMS. No, I have not.

Senator MURRAY. I have to say I have not either.

Mr. Chairman, let me just comment here. Some of our colleagues have commented on two meetings—meetings that were so brief that no one sat down. No one remembers them. Maybe the fact that they're not remembering these Whitewater meetings or sitting down to talk about them is a sign of the level of importance that this White House attached to those conversations.

And Mr. Chairman, I have to say I really fear that we are so totally focused on a few scraps of conversations and phone calls and 10-second or 10-minute meetings that we have mistakenly left the impression that the White House has been consumed with Whitewater. And indeed, it is my observation that Whitewater has been focused on instead of the real issues the American people care about here which come before this Committee, economy, jobs, Health Care, all of the real critical issues. I hope that as Senators and as Members of this Committee that we don't lose that perspective having gone through these intense hearings these last 5 days.

The CHAIRMAN. Senator Murray, if you'll permit me on the remainder of your time just to agree with you. We all serve on other Committees. I serve on the Finance Committee, I'm Chairman of the Health Care Subcommittee and we've worked on it literally now for decades, and I want to be working on Health Care. This Committee, before we were given this assignment by the Senate, had spent no time on this issue.

This has been assigned to us by the Senate and so we're discharging that obligation that we've been given, but I must tell you, when we finish this tomorrow evening, as I expect and trust we will, and we turn our attention next week to Health Care—I'm talking about the Senate as a whole and we can get back to it—I'm fully in accord with your view. I think people want us working on Health Care and other issues, and I certainly join you in that sentiment.

Senator MURRAY. And Mr. Chairman, let me add since it's still my time that this Committee has instead focused a lot of attention

on the RTC. In fact, the first vote I took on this Committee, as a freshman Member, was spending billions of dollars for the RTC bailout which was not my idea of a great first vote on this Committee. And indeed as this is our job, to oversee the RTC in its immense capacity, I can safely say Whitewater is a very small part of that as well. I think it's a concern that we have spent 5 days focused on a very tiny part of the RTC when really maybe we ought to be looking back at the RTC and focusing on the broader picture as well.

Senator D'AMATO. Mr. Chairman, Senator Bond has not asked any questions.

The CHAIRMAN. Senator Bond.

#### OPENING COMMENTS OF SENATOR BOND

Senator BOND. Thank you very much, Mr. Chairman.

Mr. McLarty, you've already testified that you were aware of the concern in the White House over the failure of Mr. Altman to mention the recusal discussions in the February 2 meeting; is that correct? Did you know of the meeting that Mr. Podesta had in the White House on March 1 where they spent 2½ hours, I believe Counsel told us, talking about the questions relating to Mr. Altman's testimony?

Mr. MCLARTY. Senator, I've already testified this morning that I was aware, that it had been brought to my attention that Mr. Altman's testimony might not be complete, and the recommendation to me was we needed to work to complete the record, and I certainly affirm that.

Senator BOND. And did you see or know of the March 2 letter or March 3 letter sent by Mr. Altman to the Banking Committee? Did those come to your attention?

Mr. MCLARTY. No, I don't believe they did. I believe I saw them sometime after they were sent.

Senator BOND. So they didn't. The White House was very concerned about the incompleteness of the answer and Mr. Eggleston, to his credit, immediately left the meeting on February 24, and called Mr. Podesta. It was discussed the next day. Mr. Eggleston read, I guess read the testimony on the following Monday, then they had a 2½ hour meeting. So by then, as Chief of Staff, that had come to your attention; is that correct?

Mr. MCLARTY. Well, Senator, you're characterizing the very concern. I was aware that members of the White House staff had brought to my attention there might be a need to make certain that Mr. Altman's testimony was complete, and I affirm that. And if you'll recall, shortly thereafter, Mr. Fiske issued subpoenas and therefore, it really became inappropriate for us to continue to be involved in that process from the White House standpoint.

Senator BOND. But you did—as Chief of Staff, you knew as of that March 1 meeting that he had not mentioned recusal?

Mr. MCLARTY. I'm not sure when I learned of that, Senator, whether it was March 1. At some point in time I was aware of what I just stated, that certain members of the White House staff felt Mr. Altman's testimony might need to be more complete, and I encouraged them to participate in that process.

Senator BOND. As Chief of Staff, did you ask why it was incomplete?

Mr. McLARTY. I didn't get into a level of detail, Senator, as I recall it at that time. It was clear that the people who were responsible for that were engaged in it and I had confidence that they would work on that matter in a proper way.

Senator BOND. I was concerned because, going back to our files, we've come across a March 7 article in The Washington Post that I believe refers to an interview done by you on Sunday's CNN Late Edition, with Mr. Gibson. In any event, The Washington Post quotes you as saying—well, actually, the transcript said, "Again, I don't think there was anything improper at all. It was an informational meeting. The same information was provided to the White House, had already become public record and had already been provided to Members, both Democratic and Republican Members of the Senate Banking Committee."

Do you recall that statement?

Mr. McLARTY. I recall the interview. I believe it was with Mr. Sesno, if I'm not mistaken, Senator Bond. I don't recall the article that you're referring to, and I believe it refers to the February 2nd meeting and not any follow-up letters to this Committee.

Senator BOND. But I'm concerned that at that time you knew the information was incomplete and when asked about it, you followed the same line that Mr. Altman had followed in the February 24 hearing. That's the reason that I asked the question about when you had knowledge that, in his February 24 testimony before this Committee, he had not mentioned that he had discussed recusal on February 2.

Mr. McLARTY. Senator Bond, if I may respond.

Senator BOND. Sure. Please.

Mr. McLARTY. And I appreciate your point. I think I just testified that I was not certain of the date that I learned this, and I believe the way that question came was about the February 2nd meeting. As the matter was brought to me, it was about his testimony being complete. I don't recall the level of detail, as I just testified a few moments ago, as I testified to you.

Senator BOND. Mr. McLarty, when did you first learn about the criminal referrals perhaps mentioning the Clintons?

Mr. McLARTY. That was asked earlier, Senator. Sometime in November, I believe.

Senator BOND. So you were not advised during, at the time that Mr. Nussbaum received the faxes from Mr. Altman, March 23 and 24, you were not advised at that time?

Mr. McLARTY. No, I was not.

Senator BOND. Do you recall who told you about the criminal referrals?

Mr. McLARTY. I believe I read about them in the paper during that period of time.

Senator BOND. That was about October 31?

Mr. McLARTY. Sometime thereabouts or shortly thereafter.

Senator BOND. As Chief of Staff in the White House, you were not advised by Counsel who had had meetings with Ms. Hanson, September 29th and the October meetings, that this was going on? That wasn't brought to your attention?

Mr. MCLARTY. No, it was not, sir.

Senator BOND. Is it distressing to you as Chief of Staff that the information was not brought to you?

Mr. MCLARTY. No, it's not, sir.

Senator BOND. Can you give this Committee any assurance that nothing was done to get rid of any records that might have been related to or have reflected upon the matter in the criminal referral, any of the matters dealing with Whitewater? Can you give this Committee that assurance?

Mr. MCLARTY. I can only give you the best of my knowledge. All of the records have been given first, I believe, to the Justice Department and then to the Special Counsel, as I understand it. That's the best of my knowledge. All of the information has been provided that has been requested.

Senator BOND. Anyone else? I thank you, Mr. Chairman.

The CHAIRMAN. Senator Kerry, do you want to be recognized?

Senator KERRY. Mr. Chairman, I don't want to belabor this, but I want the record to be complete so that we have a fair capacity to understand this.

Senator Shelby spent a little while and others have asked a number of times about the memorandum or diaries of Roger Altman with respect to the words "paralyzed," and the quote, "If we don't solve this within the next two days, you don't have to worry about her schedule."

I really wanted to place in the record, and ask unanimous consent to do so, just two newspaper—collections of news stories beginning in December of 1993 running up through the time of this diary.

The CHAIRMAN. Without objection that will be made part of the record.

Senator KERRY. I'd just like to run through it very quickly for a minute and then revisit the diary in that context.

On December 23, 1993, a newspaper article appeared in The Washington Post and this is just The Washington Post/New York Times here. But The Washington Post had "Hill Pressure Builds for Probe of Clinton's Whitewater." I might add the "Hill pressure" might more accurately have been described as "Republican pressure" because it was exclusively Jim Leach, Senator D'Amato, and Bob Dole, but that was phrased as "Hill pressure."

The day before that an article in The New York Times, "Investigators to Seek Ex-White House Files on Land Dealings." On the 24th, that's the third consecutive day, headline: "Clinton Releases Files on Land Deal," and they were all given over to the Justice Department by the White House.

On January 3rd, "Independent Counsel Urged an Arkansas Probe, GOP Leaders' Call Rebuffed." And the next day, "GOP Leaders Seek Counsel to Probe Clinton Investment."

On the 4th of January, "Clintons Continue to Gather Land Deal Files." A painstaking disclosure process is described. So the White House is in the midst of gathering all the documents, pulling it together.

On January 6th, "White House Hopes to Avoid Leaks of Clinton File." It's very important to understand that this entire thing came about through leaks. The law was broken. Someone in the RTC



broke the law and released confidentiality and there was a clear concern about the politics of this and what might happen.

On January 6th, "A Subpoena Issued of the Clinton Files," and "The White House to Comply in the Savings and Loan Probe."

On the 7th of January, "Attorney General Reno to Ask for Special Counsel in the Clinton Land Deal." I might add Attorney General Reno was obviously appointed by President Clinton. On January 8, "President's Lawyer Tried to Limit the Use of the Whitewater Files to Only the Justice Department."

In the public domain, you have a reporting of the very item which was discussed in the conversations that were referred to earlier. So this was not secret. This was a public discussion at that point of the fact that the White House was justifiably concerned about leaks and politics with respect to this.

On the 12th, nine Democrats joined in the call for a Special Counsel.

And on the 13th, "President Clinton Sought a Special Counsel" and asked Janet Reno to name the Counsel on the land deals.

Now this particular call by the Democrats occurred one day after the notice was made in the diary of Roger Altman. So all of this is the context within which Ms. Williams has testified that Hillary Clinton was totally consumed, pulling together all of these documents.

So I'd simply want to make that context available because it's very easy to sit here antiseptically talking about these items that appear, but when you realize this incredible pressure and the consumption of making sure you're complying with the law, pulling together the documents, it seems to me that a characterization about "paralyzed," we don't know if that's exactly what was said or not said, but I assume from your earlier testimony, Ms. Williams, you said something to the effect that she was spending an inordinate amount of time with Counsel.

Is that fair or not?

Ms. WILLIAMS. In my opinion, she was spending time with Counsel that should have been spent on Health Care.

Senator KERRY. Well, is it fair to say she was distracted from the rest of the agenda?

Ms. WILLIAMS. She was not distracted, but I believe that we could have been much more proactive if the time that she was spending on answering questions, press inquiries and on being talked to by her personal lawyer were spent proactively on Health Care.

Senator KERRY. Well, I understand that. But look, it seems to me that if she's spending a lot of hours on something that she didn't want to spend time on, she's distracted.

Ms. WILLIAMS. That would be a fair characterization.

Senator KERRY. I mean the President himself announced, and here is The Wall Street Journal article saying the President is backing down in an effort to protect the rest of his agenda. I mean, he was aware that this was invading the time and energy of the White House and he needed to deal with it. And dealing with it is precisely what was mentioned in Mr. Altman's diary where he says, "If we don't solve this within the next two days you don't have to worry about her schedule on Health Care"; correct?

Ms. WILLIAMS. I'm sorry. Could you repeat that, please?

Senator KERRY. "If we don't solve this"—this is reading from Roger Altman's diary—"If we don't solve this within the next two days, you don't have to worry about her schedule on Health Care."

Ms. WILLIAMS. And the question is, sir?

Senator KERRY. The question is wasn't this in fact solved within the next 2 days when the President appointed a Special Counsel and turned all the documents over to the Justice Department?

Ms. WILLIAMS. Yes, I guess to some degree it was.

Senator KERRY. So I mean this, it seems to me, is sort of an accurate reflection of the state of affairs at the time and nothing inconsistent with what you have testified of what was in fact happening at that point in time.

Ms. WILLIAMS. Well, sir, if I can just make a brief point here. The question with respect to the diary was whether or not I had had these conversations with Mr. Altman, and I felt in responding to the questions I had to say in all honesty that, to the best of my recollection, I did not have these conversations with him.

With respect to what the mood of the White House was or whether or not his diary actually reflects the mood, I won't—I won't speak to that, but I will say that the questions were did you have these conversations with Mr. Altman, and I must say that to the best of my recollection, I did not. That is not to say that Mr. Altman could have been reading the newspapers, looking at what was in the public domain and coming to these things himself. I am saying that I did not have these conversations with Mr. Altman, to the best of my recollection.

Senator KERRY. At this meeting on Health Care, you made no comment to him at all about the degree to which Hillary Clinton was wrapped up in this or involved in it or couldn't be involved in the Health Care schedule?

Ms. WILLIAMS. What I said and—excuse me, what I said was, to the best of my recollection, I did not have these specific conversations with Mr. Altman as reflected by his words and his writings, but what I also did volunteer to this Committee was that I had been saying to anyone who would listen that I believed Whitewater was a distraction from the President's agenda and I did not understand how 17 years of Arkansas history was related to feeding people, clothing people, giving people Health Care.

I was outspoken. I said that. I said it over and over.

Senator KERRY. And you might have said it to Mr. Altman?

Ms. WILLIAMS. It is possible he could have heard me say that.

Senator KERRY. Thank you very much.

The CHAIRMAN. Thank you, Senator Kerry.

Senator D'AMATO. Mr. Chairman.

The CHAIRMAN. Yes. Senator D'Amato, I want to just also indicate Senator Moseley-Braun has not yet had a chance and will want to take one.

Senator D'AMATO. Same thing with Senator Domenici.

The CHAIRMAN. Senator Domenici, you've not had a round yet either, have you? We have two Members that need to do that.

Senator D'Amato.

Senator D'AMATO. Mr. Chairman, I'm going to yield. I want to make an observation.

I think Senator Kerry has done us a great service in putting forth the fact that all of those things were in the public domain. And the matters were absolutely of tremendous consequence in taking tremendous amounts of time of the Administration.

Now Mr. Altman tells us under oath—Mr. Altman says under oath that his diaries accurately reflected his discussions with you, Maggie Williams. He said his duties—his diaries included entries which had historical significance. In other words, this wasn't just a collection of things. They had historical significance and were intended to be accurate.

Now I'm going to ask you a question. Are you saying that Mr. Altman's testimony is inaccurate?

Ms. WILLIAMS. Sir, what I'm saying to you is I am also under oath here and as I have said before, I do not have a recollection of these conversations.

Senator D'AMATO. So then he may have been accurate and he testifies to us that they were written for historical significance and intended to be accurate. Now you say you don't have a recollection.

Ms. WILLIAMS. No, it is not now that I say—

Senator D'AMATO. I don't mean to be—well, you tell me.

Ms. WILLIAMS. No, it is not now that I have said. I have consistently said even to Mr. Altman himself that I do not have a recollection of having any of these conversations with you.

Senator D'AMATO. I thank you.

Senator GRAMM. Mr. Chairman, let me try to clarify here. I don't think anybody is trying to make any big deal out of this thing, but here's the point.

You have a person like Mr. Altman, who is writing in a confidential diary that he assumes at the time is never going to be read by anybody, and he says, not that he read something in the newspaper, but that on Whitewater, "Maggie told me that Hillary Rodham Clinton was paralyzed by it." Twice under oath he's gone back and verified that entry. Obviously, the natural thing to wonder is why in the world would anybody make up that entry, which they never thought anybody would read, and then at risk of perjury defend it twice. The difficulty we have is to square that likelihood with the recollection of someone who says I don't go around talking about the lady I work for.

Ms. Williams, I assume if you did make that statement it would be a pretty extraordinary conversation, and obviously Mr. Altman thought this one was. But that's where the confusion is coming from. It's just one of these occasions where you have two people, and they have two different stories.

Let me say, Mack, I want to ask you a question, and it's something I'm confused about. I've tried to go back and put all this together and understand what was going on. I read these internal diaries, which I give greater credence to, because people wrote them from their heart. They assumed they were never going to be read. When we say things publicly, we know they are going to be read and, as humans, we all have the tendency to at least put things in the best light for us, if not put them in a light that is brighter than the sun.

In any case, all through this period we have these references in these diaries about intense pressure that Altman was under from

the White House, that he had been told by the White House that stepping aside in the Madison investigation was "unacceptable." These are powerful words that people generally don't make up or confuse with other words.

Last night, the President brought into this discussion a whole new perspective. When he said, "The only thing that upset me"—this is about Altman's deciding to take himself out of the Madison Guaranty investigation—"The only thing that upset me was that I did not want to see him stampeded into it."

Here is the point. We're reading what Mr. Altman is saying in his diary, what his confidant, the Chief of Staff, is saying in his diary, and there at least it is described that all the pressure from the White House is for Mr. Altman to stay on the investigation. Where is this—why do you think the President has reached a conclusion that there was this pressure stampeding him to get out of it?

It seems to me that you can make a case based on what we know was in Mr. Altman's mind and in the minds of the people around him. All of his peers at Treasury said he ought to get out of it, he's one of the President's closest friends, he has this long connection with the President from being in college, people are going to say at least there is a potential conflict of interest here with his friend. We know that.

But in terms of pressure, as he perceives it, it's all coming from one direction, from the White House, and it's all to stay in the Madison investigation.

Explain to me, if you can, where the President sees this pressure on him to stampede him to leave the Madison investigation and to take himself out of it?

Mr. McLARTY. Senator, if I understand your question, let me try to respond to it as best I possibly can.

As I've already commented this morning and testified, I don't know of any evidence to suggest that Mr. Altman had pressure or intense pressure to recuse himself. I certainly did not convey that to him. I think the President's comment probably is in the context—and Mr. Nussbaum and others can discuss this more fully, I believe Mr. Klein and Mr. Eggleston did yesterday in their panel—there were a number of other nominees that were before various Committees and this matter of recusal, if you had any relationship with the President was an issue, and that really was a very serious issue and one that I think particularly Mr. Nussbaum was concerned about.

Senator GRAMM. Let me ask you your opinion on something, if I may, if it's appropriate. Do you believe, given the close association with the President, that Mr. Altman should have recused himself, which again, to speak in the language of the people who are listening, that he should have taken himself out of the Madison investigation from day one?

Mr. McLARTY. My opinion is that Mr. Altman had all the facts to make that decision, he should make that decision. You've characterized his relationship with the President. It's not unusual to have a relationship. I don't think perhaps the relationship is as close and long-standing as perhaps you suggested, but I think Mr. Altman has been a person, at least in my dealings, that's always been

evenhanded and objective and if he reached a conclusion he could in this matter, then that was his decision, Senator. And I think that's what he was weighing.

Senator GRAMM. Well, I think that's correct. I guess I would have to go back to the point and pick a real-life example. I've known Senator Domenici since I came to Congress. We're not childhood friends. I never borrowed any money from him. But if I found myself in a position where I had to decide about things like criminal referrals with relationship to my friend, Senator Domenici, or if I found myself having to oversee an investigation of him—and I'm confident that I or no one else will ever be in that position, which is why I chose him—I think immediately without giving it a thought as long as a heartbeat that I would say, maybe I can be objective, but I think people are going to question whether I can be objective or not. And it wouldn't take a second to say, I want to, in the legal word, recuse myself from this.

Yet we have this long, tortured process, with all of this pressure being reported in private, for Mr. Altman to stay on, no pressure recorded in private for him to leave. It strikes me as strange logic. I don't understand the logic the President is expressing here, that he was concerned that Mr. Altman was being forced to withdraw himself from the investigation, when it seems to me that there's, instead, this overwhelming pressure for him to stay on. All of this pressure for him to stay was applied, even though there should have never been any real doubt in anybody's mind that he should have not gotten into it to begin with.

The CHAIRMAN. Do you have a response, Mr. McLarty? The time has run, but do you have a response you want to make to that?

Mr. McLARTY. Yes, very quickly.

The CHAIRMAN. Please do.

Mr. McLARTY. First, the testimony has been that there was not pressure prior on this decision and I'd like to respond to that. Second, I recall an exchange, a brief exchange between Mr. Klein and Senator Bennett last night, I believe about this recusal matter, and people can look at this matter differently. To me, Mr. Altman was the person who could know in his gut, I think as Senator Bennett said, whether he could be objective and fair and I think if he concluded that he would indeed feel that way and would be objective and fair. I think that's a decision that each individual has to make, Senator.

The CHAIRMAN. Well, we may have to come back to that. Senator Moseley-Braun.

#### OPENING COMMENTS OF SENATOR MOSELEY-BRAUN

Senator MOSELEY-BRAUN. Thank you, Mr. Chairman.

I do not subscribe to the theory that once everything has been said, everybody has to say it. And so I'm going to just try to resolve a couple of points or implications that may have been raised previously and then ask the witnesses some general questions. In the first instance with regard to the Senator from Texas, I think almost may have mischaracterized the situation because Mr. Altman was not, at the time of any of these contacts, involved with criminal referrals at all, in which we know from the record already the President was a witness and not a target of the investigation.

Your conversation about the analogy that you used with regard to Senator Domenici suggested it was a case in which——

Senator GRAMM. If the gentlelady would yield——

Senator MOSELEY-BRAUN. No, no, sir.

Senator GRAMM [continuing]. We have two sworn statements on that. September the 29th he made a decision to pass those criminal referrals and the reference to the President on to the White House. Two people under oath have said that.

Senator MOSELEY-BRAUN. At the time that these witnesses that the conversation that we're discussing today were involved, the recusal decision related to the civil cases.

Senator GRAMM. No, but he had dealt with the criminal cases on September 29th, which occurred before. That's all I'm saying.

Senator MOSELEY-BRAUN. That's not correct, sir, and the record will indicate that.

Senator GRAMM. Two people said under oath that was correct.

Senator BOXER. Mr. Chairman, can we——

The CHAIRMAN. The Senator from Illinois does not have to yield.

Senator KERRY. The Senator is allowed to draw a conclusion. The Senator is allowed to draw a conclusion as to the 29th, but there is no fact, I mean, two people may have testified, it doesn't make it a fact.

The CHAIRMAN. The Senator from Illinois has the time.

Senator GRAMM. They said it under oath. That's all I'm saying.

Senator KERRY. Somebody else said under oath that wasn't true, so you are left drawing the conclusion.

Senator MOSELEY-BRAUN. That's all I wanted to point out, that the editorializing, I think, may confuse the message that we're giving here in terms of the scope of the testimony, the substance of the testimony from these witnesses and I just want to narrow the focus back to the limited context that these witnesses had and what they have to share with this Committee. And in that vein, I think there is a second misconception that kind of came out in the conversation here with regard to the diary entries about, regarding your conversation, Ms. Williams, concerning the First Lady's state of mind.

Based on your testimony what we have are two different stories. To use again the Senator from Texas' words, he said there are two stories here. Well, there are two stories about a third person's state of mind. And the only regard in which it would be material in any event would be to the extent that it might have suggested that Mr. Altman's perception was affected in terms of his decision about whether or not to recuse himself.

That's kind of long and tortured, but I think it's important to show where the connections are here because we, we have again a lot of editorializing going on and it kind of blurs the waters and allows for the possibility at least of misconception. And I believe I've heard both of these witnesses say that neither of them had any direct role in pressuring or otherwise suggesting to Mr. Altman what he should do. And that is correct, is it not?

Ms. WILLIAMS. That is generally correct, although I would just like to volunteer once more that I suggested to Mr. Altman, with respect to whether or not he should recuse himself, that since he was going to use what I thought to be excellent judgment in defer-

ring to the staff, being a staff person, I thought it made a lot of sense for him not to recuse. I asked him why he would recuse.

Senator MOSELEY-BRAUN. OK. Now, again to put this matter in context, the Madison situation involved a failed S&L that in terms of dollar amounts, Mr. Chairman, and we've gone over this. Senator Kerry was particularly good at trying to put this whole thing in the context of the savings and loan debacle that this country witnessed. Madison came out in terms of dollar losses, although it was a lot of money in whole dollars to ordinary folks, it was still 5/10,000 of 1 percent of the total savings and loan losses.

And the only question, there is no question in anyone's mind that the reason that we are all here is, again, the connection as witnesses or again the connection, however tangential it might be, between the President and the First Lady. But at the time getting—again being specific to the issues before this panel today, at the time of the recusal decision specifically, at the time that Mr. McLarty describes, in his statement as a period from the end of September to the beginning of March, which would have been roughly the period in which you were involved, I don't know if the question has been asked, I don't think it has, but if you could quickly describe for the panel the context in which all of this happened in terms of your typical day, how many phone calls did you have in a day, how many meetings did you have in a day, how many hours did you work in a day. If you could just very briefly do that because I have a question I'd like to wrap this up with and I don't want to lose much of my time. Mr. McLarty and then Ms. Williams.

Mr. McLARTY. As great a privilege as it is to serve, the quick answer is too many of all. But in the course of a day my office would receive between 50 and 100 calls, we would try to return, as you know, most of them. There would be meetings not only on my schedule, but, more importantly certainly, on the President's schedule, that I either needed to be aware of or attend. And the hours although hours in the private sector for the people of this country are long and demanding, they are very long and demanding in public service as well. Sixteen-, 18-hour days were not uncommon and are not uncommon to Members of this Committee.

Ms. WILLIAMS. Senator, I believe that Mack has spoken well for me in terms of the hours and the number of meetings that we are involved in during the course of the day, but let me also talk a little bit about some of the activities around which those meetings and those telephone calls, what they had to do with.

Mrs. Kelly, the President's mother, died the beginning of January, right after that the President and Mrs. Clinton went on with the planned trip to Russia. This was also the same month that California experienced the earthquakes. Mrs. Clinton went out later during that month to talk with the people in California, especially the children who were there. And also during that month, January, was the President's State of the Union on Health Care.

And so you can imagine the amount of time that both Mr. McLarty and members of the White House staff put in that direction. We also—our entertaining did not stop. We had the National Governors Association dinner which is a pretty big deal to us. In addition we had the spouses.

In February, I believe the President and Mrs. Clinton came to Capitol Hill, I believe in Statuary Hall, to talk about Health Care. I also know that Mrs. Clinton headed the delegation to the Olympics.

So there were a number of things that were happening which we deemed very important, which we deemed high enough on our priority to do a lot of meetings, work 18 hours a day and take all of those phone calls.

Senator MOSELEY-BRAUN. And to that I would say—boy, the light has gone on already.

The CHAIRMAN. I know you needed another couple of minutes and Senator D'Amato has agreed to that.

Senator MOSELEY-BRAUN. Oh, lovely. Thank you very much, Senator D'Amato.

And to that I would add and Mr. McLarty's statement, concluded the North American Free Trade Agreement, late lifted sanctions against South Africa, reinstituted the Super 301 Trade Powers, obtained GATT agreement, convened the APEC in Seattle, brought our G-7 allies to Detroit for a major conference on jobs. I remember that. Not to mention the economic legislation and the domestic agenda that he talked.

So this was a very, busy, busy time, which gets to the question of structure and which I think really is credit here because we had a situation in which Mr. Altman was—had two jobs, for all intents and purposes, and it sounds like, based on the testimony, really more than two jobs because he had the RTC Interim Chairmanship/CEO and then the Deputy over at Treasury and then he was involved with Health Care, and so Mr. Altman was involved in all these activities.

Ms. Hanson was for all intents and purposes wearing two hats as well, at Treasury and then also helping Mr. Altman with regard to RTC matters.

My sum-up question, because I know I'm beyond time, given all of these circumstances and given the fact that you have to be able to structure interactions with this kind of context, would you agree—and I want to ask my question specifically to Mr. McLarty—I think what it suggests is that, would you agree that perhaps some additional steps ought to be taken to assure that the systems and processes and procedures are in place for employees at not just the White House because we've seen it—it was in place for the White House personnel, but for these related agencies as well and members of the Cabinet as well to make certain these interactions happen in a coherent, comprehensive way and we can avoid situations like the one we're in now.

Mr. McLARTY. Senator, I would strongly agree with that. I think you make a very good point. I believe Secretary Bentsen responded to that briefly in response to questions here and I felt that was a very productive time of these hearings.

Senator MOSELEY-BRAUN. Thank you very much, Ms. Williams and Mr. McLarty.

Again, to Senator D'Amato, thank you very much for allowing me to go over my time.

The CHAIRMAN. Thank you, Senator.

Senator Domenici.



Senator DOMENICI. Thank you, Mr. Chairman. First of all, let me explain to the Committee my absence the last 2 hours or so. My other responsibilities didn't stop when I took on this one, and I had an appropriations conference for matters very important to my State, and I've been absent, but I will nonetheless go very quickly on my questions.

I think you all have covered most things.

I would like to make one observation. I still have a great deal of difficulty understanding this whole business of recusal. It seems to me that on the one hand, there is ample evidence that it wasn't very important that Mr. Altman even stay on because he had de facto, somebody says, recused himself. On the other hand, there seems to be a huge amount of concern among a number of White House people as to why he would even consider recusing himself. And then people like yourself, Mack, say it's all up to him.

Frankly, I wonder very much what that's all about. I don't know that I'm going to get the answer, but clearly before I'm finished, I hope I understand what that's all about.

I do know that on February 2nd, there were still some very important issues that could be decided by the head of the RTC. Clearly the White House has referred to that position as the decision-maker with reference to the Whitewater situation, the statute of limitations and whether tolling agreements would be sought. He may even have been the decisionmaker on whether or not a suit would be filed; some say there was ample evidence, some say there wasn't enough evidence. So he was in a decisionmaking position.

Now, having said that, I then find that there's interest in the White House as to who knew that he was going to recuse himself, and I want to ask Ms. Williams a question.

On February 3rd, Ms. Hanson testified that she arrived at the meeting at your office shortly after Mr. Altman left. Ms. Hanson testified that she spoke with Mr. Ickes at that point in your office. Ms. Hanson testified that she was asked by Ickes how many people knew that she had recommended recusal. She answered just a few people and Ickes said good.

Now, according to Hanson, Ickes then said it would be good if he did not disclose to others that she had recommended he recuse himself, "she" being Hanson.

Now, Mr. Eggleston conferred and agreed that this is what occurred.

Ms. WILLIAMS. I'm sorry, sir. I didn't hear the last.

Senator DOMENICI. He agrees that this is what occurred, what I've just described. Now in your deposition, you do not recollect these events which occurred at your office in your presence. Does the testimony of Mr. Eggleston who now confirms that that took place, and of Ms. Hanson, who also says it took place, does that refresh your recollection?

Ms. WILLIAMS. Sir, it does not. Let me ask you, if I may, did Mrs. Hanson say—I'm sorry. Did Mrs. Hanson say that she was talking to me?

Senator DOMENICI. No, it was in your office.

Ms. WILLIAMS. OK.

Senator DOMENICI. And I believe the testimony is that you were there.

Ms. WILLIAMS. OK.

Senator DOMENICI. So I'm not saying they were talking to you, but it was in your office and in your presence. This discussion of how many people know and it's good that nobody else finds out, don't tell anyone, you don't recall that, as I understand it.

Ms. WILLIAMS. No, sir. If I had recalled it, I would have said so in my deposition.

Senator DOMENICI. So you stand by your testimony that you don't recollect that incident?

Ms. WILLIAMS. No, sir, I do not.

Senator DOMENICI. One last one. You testified earlier that on February 2nd, Mr. Altman described—and I'll quote you, this is your quote—described “the process by which President and Mrs. Clinton could be asked to waive the statute of limitations.”

What did Mr. Altman say about that process?

Ms. WILLIAMS. Well, from my testimony, and that quote, I believe, kind of summarizes it. Once again, let me tell you the gist of it, as I recall, was that the RTC staff, the process would be that the RTC staff would make a recommendation to him if he did not recuse himself or the RTC staff would make a recommendation to someone else in the RTC. That is essentially what I took away from the meeting. I was not focused on the details, but generally I understood what that meant.

Senator DOMENICI. Did you pass that information on to the First Lady?

Ms. WILLIAMS. No. I saw no reason to.

Senator DOMENICI. But essentially your interpretation was that if Mr. Altman was still the head of the RTC, he would be the one making the decision as to whether they would be asked to waive the statute of limitations or not; is that correct?

Ms. WILLIAMS. Yes, sir, but let me clarify here. My understanding was, in addition, from Mr. Altman, was that whatever recommendation the RTC staff would make, he was likely to accept that recommendation.

Senator DOMENICI. I understand.

Ms. WILLIAMS. OK.

Senator DOMENICI. And that's what puzzles me so much. Why all the concern if in fact he had indicated they were going to make the decision and he wasn't? In your opinion, given what you heard and saw, why was the White House so concerned about his not recusing himself?

Ms. WILLIAMS. Well, sir, I won't speak to the opinions of others, but since I was in that meeting and I suggested by my question to Mr. Altman that it didn't make any sense to me, if he was going to accept the recommendation from good staff work, why he would recuse. To me it was just a commonsense question. Here he's going to accept the recommendation. The RTC staff has been involved, they know what's going on and he is going to look to staff that has been involved to accept or—to accept or reject the recommendation. And his view was at the time that he was likely to accept whatever their recommendation might be. My questions sprang from kind of common sense, why would you have to recuse then?

Senator DOMENICI. So you found out that he did in fact recuse himself later on?

Ms. WILLIAMS. Yes, sir. I did.

Senator DOMENICI. And I gather that you know that he recused himself after the statute of limitations had been extended?

Ms. WILLIAMS. I believe I know that, now subsequently, yes.

Senator DOMENICI. Thank you very much.

The CHAIRMAN. Thank you.

Senator Boxer.

Senator BOXER. Thank you, Mr. Chairman.

Mr. Chairman, as I understand Senator Gramm's statement—and please, someone correct me if I don't accurately recall it—he said that Altman “dealt with the criminal matters on the 29th meeting.” Now, that was the meeting that was held on the Waco situation where Ms. Hanson has testified that she told Mr. Nussbaum that he was going to have to deal with press leaks regarding the criminal referrals. And Senator Gramm says Altman dealt with the criminal matters.

I think it's important to note, number one, that Mr. Altman testified to us that he didn't send Ms. Hanson to that meeting. I think it's also important to note that Ms. Hanson said she never saw the criminal referrals, that she didn't present the criminal referrals to anyone and I think it's important to note that as far as I can tell no one that appeared before us with the White House or with Treasury ever saw the criminal referrals.

Mr. McLarty, have you ever seen the criminal referrals?

Mr. McLARTY. No, I have not, Senator Boxer.

Senator BOXER. Ms. Williams, have you ever seen the criminal referrals?

Ms. WILLIAMS. No, Senator, I have not.

Senator BOXER. To your knowledge, has the President or the First Lady seen the criminal referrals, Ms. Williams?

Ms. WILLIAMS. No. To my knowledge, they have not.

Senator BOXER. And how about you, Mr. McLarty?

Mr. McLARTY. To my knowledge, they have not.

Senator BOXER. I want to go to Mr. Altman's diary one more time. Ms. Williams, what you have said is that you have no memory of saying to Mr. Altman, “The First Lady is paralyzed over Whitewater.” Is that correct?

Ms. WILLIAMS. That's correct, Senator.

Senator BOXER. And you have stated that you would not say that to anyone?

Ms. WILLIAMS. I have stated that it seems inconsistent with who I am and how I operate to have said that.

Senator BOXER. But you did tell this Committee, I thought in a very articulate way, that you told almost anyone who would listen who was within the Administration or very close to the Administration that you thought there was too much time being spent on Whitewater, that it was diverting the First Lady, the President, and the White House staff from the country's agenda that you seem to care very much about; is that correct?

Ms. WILLIAMS. Yes, I was outspoken on the matter.

Senator BOXER. So that it is possible that someone hearing you, perhaps, wax eloquent on the point—and I think you can wax eloquent on the point and you did before us several times—might have taken away an inference that the country's agenda could be

paralyzed if this thing continued? Not to quibble over a word, but in essence the country's agenda could be paralyzed or could be stopped cold because too many people were having too many meetings, as Mr. Cutler said, about this matter?

Would that be a fair characterization?

Ms. WILLIAMS. Yes, Senator, that would be fair.

Senator BOXER. Well, Mr. Chairman, I think we've gone around and about with these witnesses. I think that the President and the First Lady have been well served.

In a closing question, I would say to Mr. McLarty, now that Mr. Panetta is Chief of Staff, have you shared any of the lessons that you learned from this whole situation?

And you were very open and honest with this Committee in telling us you believe it should have been handled differently or better, in a more streamlined fashion. Have you shared those thoughts with Mr. Panetta?

Mr. McLARTY. Chief of Staff Panetta, of course, was involved in the White House as Director of OMB and I think that's one of the things we did very well. We've had several discussions, not just specifically about this matter, although it included that, but other operations, decisionmaking at the White House. Chief of Staff Panetta is a good Californian and he will be an able—he is an able Chief of Staff.

Senator BOXER. In answer to my question, have you discussed some of the management tools that you have at your disposal, perhaps some ways to handle this type of an incident in a better way, an incident that occurred many years ago that happened before the President was President? Have you discussed perhaps some of your insights on how to better handle the situation?

Mr. McLARTY. Yes, Senator, we have and also of course Mr. Cutler's report addresses that in a very specific way and outlines specific steps which have already been implemented at this point.

Senator BOXER. Mr. Chairman, I have to say one thing that I really learned today. As we seek to find the truth, it is worth noting that sometimes the truth is elusive because to one person, intense pressure is just a rough conversation. You know, I grew up in New York, I grew up in Brooklyn and there's a way that people talk in New York and in Brooklyn, in the way they express themselves, that's a little bit different from the way people talk in California and now I'm a combination of both, so I don't know how I talk. But the bottom—

The CHAIRMAN. I'd say there's a little of Brooklyn left.

Senator BOXER. Well, they say you can never take Brooklyn out of the girl although you can take the girl out of Brooklyn. This is true.

But I would say this: We have listened to Mr. McLarty. Indeed, I think all of us in this Committee, Republicans and Democrats, have probably spoken with Mr. McLarty. Mr. McLarty, as Chief of Staff, I would say you were as close to the President of the United States as you could get. Did you at that time speak with him every single day, would you say?

Mr. McLARTY. Generally I did, if he were here.

Senator BOXER. Probably a few times unless he was out of the country?

Mr. McLARTY. Unless he was traveling or something of that nature but generally every day.

Senator BOXER. Tell me again, what did you say to Mr. Altman when he asked you about recusing himself from this issue?

Mr. McLARTY. I listened politely and encouraged Mr. Altman to make the decision he felt was the right one.

Senator BOXER. Well, Mr. Chairman, that doesn't sound like intense pressure. It sounds like respect, it sounds like understanding.

I thank you very much for your clear answers, both of you, and I am very glad that you both are where you are.

The CHAIRMAN. I might just say before your time is gone, it also sounds like Mack McLarty. I think that advice he gave is consistent with at least the individual that I know him to be, so I'm not surprised that that would be his advice.

Senator BOXER. And, Mr. Chairman, if I might say, it says a lot about Bill Clinton, who chose Mack McLarty.

Mr. McLARTY. Thank you.

The CHAIRMAN. Senator Faircloth.

Senator FAIRCLOTH. Thank you, Mr. Chairman. I'd like to follow up on Senator Hatch's line of questioning. On Tuesday, Roger Altman testified—this question is to you, Ms. Williams.

Roger Altman testified that he kept a diary or as he referred to it his scrapbook of historical significance. One of the items in that diary or scrapbook is his impression of a meeting with you in January of this year. He wrote that he received the impression from you that the White House was actively trying to negotiate with the Attorney General and other officials at the Department of Justice over the jurisdiction or scope of what a Special Counsel could look into regarding Madison Guaranty- and Whitewater-related matters. This was before the Special Counsel had been appointed.

The point being that after months of opposition, stonewalling, backing and filling, the Clintons were finally about to succumb to insurmountable political and growing editorial pressure and ask for the appointment of a Special Counsel. But not until they could first try to limit and control his jurisdiction.

Now, down in Eastern North Carolina that's known as not wanting to get bitten by your own dog. But Ms. Williams, as I'm sure you're aware, it has been widely reported that Mrs. Clinton was adamantly opposed to the appointment of a Special Counsel and I believe she has admitted to as much. Now I'd like to ask you a few questions regarding the appointment of the Special Counsel in order to clear up any lingering misconceptions and set the record straight.

Ms. Williams, did Mrs. Clinton have any communication with Robert Fiske prior to his appointment as the Special Counsel?

Ms. WILLIAMS. To my knowledge, absolutely not.

Senator FAIRCLOTH. Could it have occurred without your knowledge?

Ms. WILLIAMS. It could have, but I doubt it very seriously.

Senator FAIRCLOTH. Bernard Nussbaum, the former White House Counsel, and Robert Fiske are friends and professional associates. Mr. Nussbaum and Robert Fiske represented the same side in at least two different legal cases. Mr. Nussbaum even recommended his friend Robert Fiske for a job with Iran-Contra Special Counsel,

Lawrence Walsh. Now Mr. Fiske is investigating Bernard Nussbaum for activities we cannot discuss here today.

Ms. Williams, are you aware of any communication between Hillary Clinton and Bernard Nussbaum determining the appointment of Robert Fiske as Special Counsel?

Ms. WILLIAMS. No, sir, I am not.

Senator FAIRCLOTH. Are you aware of any communication between any White House official, including the Office of the First Lady, and Robert Fiske prior to his appointment as Special Counsel?

Ms. WILLIAMS. I am certain that there was not. I mean, Mr. Fiske is, as I understand it, a Republican contributor to Republican campaigns.

Senator FAIRCLOTH. I just wanted to know, are you aware of any communications? I don't need a history of Mr. Fiske.

Ms. WILLIAMS. No, sir. I'm not aware of any.

Senator FAIRCLOTH. Are you aware of any communication between Mrs. Clinton or her representatives and officials at the Justice Department concerning the appointment of Special Counsel?

Ms. WILLIAMS. No, sir. I am not aware of any.

Senator FAIRCLOTH. This question is for Mr. McLarty. We've heard testimony about a meeting on September 29, 1993, in which the White House received a "heads-up" about the RTC criminal referrals. I'm trying to determine whether this in fact was the first "heads-up." When you had Mr. Cutler do his report on White House-Treasury contacts regarding the RTC criminal referrals, did he investigate possible "heads-up" earlier than September 29th?

Mr. McLARTY. Senator, his report was a thorough one. You'll have to ask him about the scope before that, but it's a very thorough report and I think he examined all contacts, but he can speak to that in a more precise way than I can.

Senator FAIRCLOTH. Did anyone in the White House have any communication with anyone who was aware of the existence or content of the RTC criminal referrals before the September 29th "heads-up"?

Mr. McLARTY. Not to my knowledge, Senator.

Senator FAIRCLOTH. Mr. McLarty, yesterday at the House hearings, Representative Leach said that there were some highly unusual things that happened right around the time that the White House was given the September 29th "heads-up." At that time the usual practice for RTC investigators was for RTC investigators to send criminal referrals directly to the Justice Department. This was the policy; a criminal referral from RTC went straight to Justice. Instead, they were sent to lawyers in Washington on September 30th. The day after Jean Hanson gave the White House a "heads-up" that those referrals were coming to the Washington RTC office, RTC lawyers began what Representative Leach referred to as an unprecedented review of these referrals. RTC lawyers then delayed transmitting the referrals to the Justice Department for a week and they developed a legal analysis rejecting the personal investigators' recommendation; in other words, the RTC lawyers went against their own people. They raised questions about the statute of limitation and double jeopardy for James McDougal of

Madison Guaranty Savings & Loan. A major effort was taken by RTC lawyers——

The CHAIRMAN. Senator Faircloth, excuse me. I don't want to interrupt you and that's why I've been listening carefully to what you say here. I think we're up against the scope problem here in terms of whether or not we're veering over the line. I don't say if we are that you are doing that intentionally but whether we're getting into any part of an active phase of the Special Prosecutor's investigation that he's asked us not to penetrate and so I'm concerned that we may be running that risk here.

Senator FAIRCLOTH. Mr. Chairman, just let me ask the question, because I wanted to be up against the wall. I just didn't want to jump it.

The CHAIRMAN. I understand.

Senator FAIRCLOTH. They were worried about double jeopardy for James McDougal at Madison Guaranty Savings & Loan. A major effort was undertaken by RTC lawyers to debunk their own investigation. When the referrals were finally sent to the Justice Department, they went with an objecting legal analysis attached. RTC sent an objecting legal analysis from their own professional field investigators.

Jean Hanson has apparently said she does not recall the events, but according to the Acting RTC General Counsel at that time, Glion Curtis—I think that's the correct pronunciation—General Counsel at that time, Glion Curtis, said she was briefed.

Mr. McLarty, according to Mr. Leach, the RTC lawyers in Washington were trying to debunk the deferrals—referrals the day after the September 29th meeting. Now, White House meeting. Let me ask, were you aware of these events?

The CHAIRMAN. Well, on this point, I think to ask the witnesses to comment on this, it's one thing I think for you to pose an issue that's in your mind or a concern that you have. I think to the extent that we now start to build an exchange here and put these questions to the witnesses and ask them to respond, we run smack into the injunction that we're—that we face of, I think, crossing the line into the area where there's an active investigation underway that we've been asked not to interfere with.

I feel compelled to say to the witnesses at this point that, no matter how benign the answer may be or otherwise, that I don't think it's appropriate for us to engage in questioning on that right now since that is in an area that Mr. Fiske has asked us not to deal with at this point and which the Senate also has ruled out of bounds for us as I read our resolution.

So if I may say, and I do that respectfully to the Senator from North Carolina, but I think you want to go right up to the line. I understand that. I think we're there. I think if they start engaging you in this line of discussion then we've gone over the line, and I can't permit that and I don't think you necessarily want that to happen either.

Senator FAIRCLOTH. Well, my time is up. I've got one more quick question. Do you believe it would be significant if there was "heads-up" earlier than that which has been testified to here so far? Would that be a significant thing, Mr. McLarty?

Mr. McLARTY. Senator, I really honestly don't know how to respond to your question or your statement. It's obvious you know a lot more about these RTC matters than I do. And without studying a specific issue, I don't know how to respond to your question whether it would be significant or not.

What I can say is there is no evidence to suggest that anyone in the White House has done anything to influence the RTC's decision process and I think career RTC people have said the same thing under testimony—under oath.

The CHAIRMAN. Thank you.

Senator Dodd.

Senator DODD. Thank you, Mr. Chairman. This will be very, very brief. I know we need to move on.

Just a couple of observations. One, our colleague from Delaware, Senator Roth, in talking about "de facto recusal" and de jure, I guess, recusal I think tried to use your recusal, Mr. McLarty, as an example where your former employment with ARCO and your status there and then the company's involvement with some issues to be forwarded compared that to Mr. Altman's decision to recuse as if somehow they were on some sort of equal footing. I think the record needs to reflect that Mr. Altman, whatever other complaints people may have, had no financial interest in Madison Guaranty or any of the interests that were going to come before the RTC. His decision to recuse, ultimately I guess, was based more on what he felt may have been a personal relationship with the President and Mrs. Clinton than anything else. I just didn't want those two examples to be left out there as comparables. That's more of a statement than a question.

But, Mr. Chairman, I'd like to make a couple of observations, if I could, because I think the record ought to reflect this. We've seen a strong indication of this Administration's willingness to be cooperative. I know of no other example on inquiries by the U.S. Senate where the Chief of Staff of the President of the United States and the Chief of Staff of the First Lady have come before a Senate Committee—now there are historians around here who may correct me but as far as I know that is unprecedented—voluntarily to come forward and to talk about these matters.

The normal course is to fight that every step of the way. We've seen that experience in the past and for many people who may be watching these procedures or listening to them who may not be familiar of the historical context, the fact that Mr. McLarty and Ms. Williams are here today voluntarily to answer questions, and I think very directly and very candidly of this Committee, is something I hope the Committee will take note of as an unprecedented step. And secondly—

The CHAIRMAN. Well, Senator Dodd, shouldn't it be noted, too, they're here because the President told them to come up here and respond to these questions?

Senator DODD. Which as well, the President deserves credit for. He asked them to come here rather than fighting it all the way and hiring six law firms to try to come up with Constitutional arguments why you don't have to appear here. We've seen that in the past.



Secondly, Mr. McLarty, I want to pay a particular compliment to you as a former Chief of Staff. This group of people we had before us yesterday was about as fine a group and I'd say the same for Ms. Williams as well, but and I think you heard that from almost every Member here. They answered directly, and honestly took steps of their own volition in a number of instances in which others, I think, would be the first to tell you today they wish they had in a couple of other instances. I think that's a compliment to you in putting together a first-class team of people.

These are people's faces the American public never get to see. They probably don't remember their names today, who they were, but they're down there every day working very hard. I think they reflected well on the President and on the people around him who put that staff together and I want the record to reflect that as well.

Last, and it's a question for you. In his testimony before the House of Representatives, Lloyd Cutler noted that while various Treasury-White House contacts violated no ethical standards in his judgment, it would have been better if some of the contacts had never occurred. He noted—and in fact—I didn't know he used these words and I used them because my colleague from Utah has repeated them but—when I consider I used the word “sloppy”—there were too many meetings, too many people milling around, that created some of these difficulties.

So instead of going back over that, I wonder if you might share with this Committee what steps have been taken at the White House within this Administration as a result of what's happened here, to minimize this from happening again? Just from an administrative standpoint, that would avoid the kind of proliferation of meetings and people being involved in something beyond their scope of responsibility, if you will.

Mr. McLARTY. Senator, first, thank you for your kind words and not only about me but more importantly about the dedicated men and women who serve in this White House. And while I appreciate your generous comments about putting the staff together, I really would be remiss if I did not underscore that they reflect the President, the Vice President's input and their values in the White House makeup.

Second, to respond to your question, I made almost an identical comment that, particularly with the benefit of hindsight, some things should have been done differently and Mr. Cutler points that out in his report and outlines really three steps: First, that any contacts relating to a particular law enforcement investigation should be initiated with White House Counsel approval. And as I said in my opening statement, even better, on a Counsel-to-Counsel basis which is what he recommends. And I would note that many of the contacts that are being discussed today had White House Counsel either approval or involvement or were handled on a Counsel-to-Counsel basis, but still there were too many contacts.

And third, Mr. Cutler points out that he and his colleagues in the White House Counsel's Office are drafting rules of conduct for the future concerning contacts between the Office of the White House Counsel and the Executive Branch agencies with law enforcement functions. The first two are already implemented, the third is in process and will be implemented shortly.

Senator DODD. I commend you for that and that's the kind of response and action that I'm pleased to see and undertaken of your own initiative. It should be noted of course that you said so in your opening statement. As I mentioned last week, we've used a lot of language and acronyms and dates and names that could probably cause most people's eyes to glaze over. Except for the subject matter we're talking about, and the notion that this was an all-consuming set of events because that's what we're paying attention to here, as you point out in your testimony, goes far beyond that.

From the end of September, September 29 to roughly March 3 or 4, 1994, is the window we're talking about. We passed the North American Free Trade Agreement, obtained a GATT agreement, and the President traveled a number of places worldwide. There's a whole list of things that you included in your testimony that involved—I know because I was involved in a number of these things—countless hours, countless meetings and this did not cause a paralyzation of activity at all. Quite to the contrary. A lot of other things were going on and I think that should be noted as well. With that I thank both of you for being here today and I commend you on your testimony.

Mr. McLARTY. Senator, thank you.

The CHAIRMAN. Let me just indicate, I've talked to the Senators on this side and I have not received any indication from anybody that has any further questions right now.

Is that correct, Senator Sasser?

Senator SASSER. Well, Mr. Chairman, to paraphrase our own colleague, Stu Udall, every question has been asked of this panel that needs to be asked. I'm just not sure that everybody's asked it yet.

[Laughter.]

Senator D'AMATO. Mr. Chairman—

Senator SASSER. But frankly, I don't have any further questions. Thank you.

The CHAIRMAN. Let me also say it will be my intention, once we finish with this panel which I hope we can do shortly, we'll take roughly a half an hour break because we know we've got two other panels today and we want to get through both of those, so that we can let people get a bite of lunch. We'll start roughly a half an hour after we recess. So let's finish up with this panel now.

Senator Bond.

Senator BOND. Just a couple of quick questions and I'll try to be brief.

Mr. McLarty, when you are going to do an interview, show or major appearance, do you normally have somebody prepare a briefing memo for you on positions that the White House has taken or that you are taking? Do you have a memo prepared for you?

Mr. McLARTY. Senator, usually it is not in written form. It really depends on the type of interview. Usually the preparation is rather brief and, frankly, reflects a discussion with two or three people that are involved in topical areas that the interview will probably focus on. Usually there's—usually there's nothing written prepared.

Senator BOND. Is there anybody generally responsible for that, preparing you on those interviews?

Mr. McLARTY. It really depends on the type of interview and the topics and what is topical at the time. If it's going to be on foreign

policy, the briefing would normally come from the NSC. If it's on economic matters, it would come from the National Economic Counsel personnel.

Senator BOND. Do you have any recollection who would have prepared you for that CNN interview show which I have referred to in the last line of questioning, where you talked about Mr. Altman's position? Do you know who would have done it or who did it?

Mr. McLARTY. Senator, as I recall it, that was a relatively far-ranging interview, as many are, and I think I received briefings from several people. Perhaps someone from the White House Counsel's Office would have briefed me on the matter that you are speaking of. I honestly don't recall the briefing. As I remember, it was a busy time and I didn't spend a lot of time getting briefed before that interview.

Senator BOND. And I can understand that. I'm trying to find out who did it because the concern I have is, there was much discussion in the White House about the inaccuracy of Mr. Altman's testimony, but that seems to be as far as it got. There was talk about it. I personally received a telephone call on March 2nd from Mr. Altman, not because he had discovered that the testimony was in error, his first words to me were The Washington Post is going to publish this story the next day, and I have the sinking feeling that I found out only because it was going to be in the newspaper the next day.

That's why I'm trying to find out who should have or would have been in a position to brief you, to tell you why the testimony by Altman was not correct or why you were not given the information that the recusal should have been discussed.

Mr. Chairman, I yield the balance of my time.

The CHAIRMAN. All right. Let me just indicate I've been informed that the Senate is about to start four back-to-back votes starting at 2:10. The first one will run for 20 minutes; the next three, 5 minutes each. That will take us into the range, by the time they announce those votes and so forth, to a little bit after 3:00. So I'm going to, in a moment, discharge these witnesses and indicate that we'll start with our next panel. We'll recess the Committee as well. We'll start our next panel at 3:15, so those witnesses can be on notice.

I want to say to these two witnesses, we appreciate, very much, your testimony. I have one other question that I want to put to Ms. Williams before this vote starts.

I was listening very carefully to everything that's been said, not just by the two of you but by all of our witnesses, and I'm trying to make sense out of this obvious contradiction between Mr. Altman, his diary, what he bases that on and the testimony that we've gotten here from you today, and also very much on the recusal issue. What I'm wondering is this: I'm looking for how, how could that plausibly be, how could that ever be reconciled?

I'm wondering, Ms. Williams, you came to the meeting late, the meeting that we're talking about on February 2nd?

Ms. WILLIAMS. That's correct, sir.

The CHAIRMAN. You arrived late at the meeting. So anything that went on in the meeting before you got there, you are obviously

not going to know about because you weren't there; isn't that fair to say?

Ms. WILLIAMS. That would be fair to say, Senator.

The CHAIRMAN. So whatever he might have taken away from that meeting that occurred before you arrived would be between the other participants in the meeting and him and that would be outside the scope of your knowledge; wouldn't that be fair to say?

Ms. WILLIAMS. Yes, sir. That would be fair to say.

The CHAIRMAN. OK. Also, when you came in, you weren't prepared or briefed or ready to discuss recusal, as I understand your testimony today, in any formal fashion. The issue came up and you gave a point of view, essentially off the top of your head; would that—I don't say that disrespectfully, but would that be a fair way to characterize it?

Ms. WILLIAMS. Very much off the top of my head.

The CHAIRMAN. In fact, Mr. Nussbaum, you felt, in the meeting was sort of dismissive of your point of view. You also said that today, did you not?

Ms. WILLIAMS. I believe I mentioned that.

The CHAIRMAN. I thought I heard that. In any case, I'm wondering, just to try to reconcile these two accounts if, in Mr. Altman's mind, if he's in there and he's already gotten a dose of negative feedback on his decision to recuse himself—I'm just theorizing now—if, when you offered your opinion, which was a spontaneous opinion that you offered at that particular time, if he might have construed your opinion to be one either coming—you have two roles in the White House, you work for the President, you work for the First Lady—whether Altman, in his frame of mind, might have thought that whatever opinion you were giving was not just your opinion, but maybe you were giving an opinion that might have been a reflection of either the President's or the First Lady's.

I'm trying to think about why he would perhaps have imputed more meaning to the extent that he felt, quote, "whatever the pressure was that caused him to change his thinking," if he might have imputed to your comment, which was an offhand comment as you describe it, a meaning beyond what you intended but what he might in his mind have attached to it.

Do you understand what I'm saying?

Ms. WILLIAMS. Yes, sir, and Senator Riegle, I really believe that you are trying to understand this, and I really want to help you understand this, but I have to tell you, I do not know what was in Mr. Altman's mind.

The CHAIRMAN. No, I understand. No, I'm not asking you to try to guess at that. I'm trying to, in my own mind, think about how two people with good intentions in the same meeting could have events unfold and come away with perhaps very different feelings about it.

Ms. WILLIAMS. Yes, sir.

The CHAIRMAN. You see what I'm saying?

Ms. WILLIAMS. I absolutely see what you're saying.

The CHAIRMAN. Committee stands in recess until 3:15.

[Recess.]

The CHAIRMAN. The Committee will come to order. This afternoon, on this panel, we have before us Mr. Harold Ickes who is

Deputy Chief of Staff to the President, Mr. George Stephanopoulos who is the Senior Advisor to the President for Policy and Strategy, Mr. John Podesta who is Assistant to the President and Staff Secretary, and Mr. Bruce Lindsey who serves as Assistant to the President and Senior Advisor.

Gentlemen, let me ask you now, if you would, please, stand and raise your right hand. Do you swear that the testimony you're about to give is the truth, the whole truth, and nothing but the truth, so help you God?

The WITNESSES. I do.

The CHAIRMAN. I understand that all of you have statements and let's just start with the senior—I'm not sure what the rank is here, being respectful, would that be you, Mr. Lindsey or would that be Mr. Ickes?

Mr. LINDSEY. I believe Mr. Ickes.

The CHAIRMAN. Mr. Ickes, why don't you proceed.

**TESTIMONY OF HAROLD ICKES, ASSISTANT TO THE  
PRESIDENT AND DEPUTY CHIEF OF STAFF, WASHINGTON, DC**

Mr. ICKES. Thank you, Mr. Chairman.

Mr. Chairman and Members of the Committee, my name is Harold Ickes. I serve as Assistant to the President and Deputy Chief of Staff. I come before you today to inform you, and the American people, about my knowledge of the facts concerning contacts between the White House and Treasury Department officials related to Madison Guaranty Savings & Loan.

I want to thank you for this opportunity to address some of the concerns that have been raised about these contacts. I firmly believe my conduct in this matter was legal, ethical and proper.

Let me briefly highlight for you the events relating to my involvement in these matters. In doing so, I ask you to remember that my days, like yours, are long and busy; that there were many other matters that I was dealing with at the time; and that it is hard, months later, to separate what I knew at the time the events occurred from what I also learned from press accounts and public discussions of these matters.

I joined the White House staff in January of this year. I am primarily responsible for managing the President's Health Care initiative, but for a period of time when I first came to the White House, I was responsible for pulling together a working group to coordinate the White House's response to press inquiries concerning what is generically known as "Whitewater."

In late January and early February, as you will recall, Republican Members of Congress, including Members of this Committee, began making an issue about the expiration of the statute of limitations with respect to the Resolution Trust Corporation's inquiry into Madison. On January 11th, eight Republican lawmakers called upon the RTC to enter into tolling agreements with the Clintons and other interested parties, to "allow time for a complete and independent investigation and permit the orderly operation of the legal and judicial processes."

On February 1, Senator D'Amato, on the Senate Floor, stated that the "clock was running" on the RTC's Madison inquiry, and urged the RTC to immediately seek tolling agreements "to stop the

clock and assure that there is time for a thorough, impartial investigation of the facts." On that same date, Roger Altman wrote Senator D'Amato to assure him that "the RTC is mindful of the impending February 28 statute of limitations with respect to Madison," and stated that the RTC would vigorously pursue appropriate remedies, including tolling agreements. On this same day, Mr. Altman asked to meet with myself and others in the White House, which we did on February 2nd. Thus, this meeting took place in the context of the highly publicized statements on the Senate Floor and elsewhere that I've just described.

As I recall, for most of the meeting, Mr. Altman made a presentation about the procedural options generally available to the RTC in cases such as Madison, in view of the statute of limitations deadline—the same options that were the subject of the statements on the Floor of the Senate. My impression from what Mr. Altman said was that the statute was likely to expire before a full investigation into the Madison matter could be completed and that this could result in a situation in which the RTC would have three options: One, the RTC could seek a tolling agreement; or 2, failing that, the RTC could file a protective claim to preserve its ability to fully complete its investigation; or finally, the RTC could allow any potential claims to lapse.

In my deposition before the Senate Committee Counsel in July of this year I was asked to recount my recollections of the February 2nd meeting. I was twice denied the opportunity by Committee Counsel to review my notes of that meeting before responding to the questions. I stated that I could not recall the words that were spoken at the meeting, but that my impression of what Mr. Altman said—the gist of it—was that "the investigation probably would not be concluded and that a determination could not be made by the RTC's General Counsel as to whether there was a basis for a civil claim until after the expiration of the statute of limitations." By this, I meant that there probably would not be sufficient time to complete fully the Madison investigation, in order to permit the RTC to make a judgment about whether the merits of the case justified pursuing a civil suit.

My understanding was based on the discussion of the three options, as well as the public statements about these issues. As I understood it, the RTC probably would need more time to complete a thorough investigation and an internal review, before making a final determination as to whether there were sufficiently meritorious claims to justify committing agency resources to pursuing a full-blown lawsuit. But I also understood that the RTC could file a protective lawsuit to preserve future claims, if there was not a tolling agreement.

It has been suggested, based on my deposition, that I did not believe the RTC would be in a position to file such a protective suit by the February 28th deadline. That is simply not so. To the contrary, I understood that the RTC was in a position to file such a protective claim if it did not obtain tolling agreements. This is corroborated by two sources.

First, it is corroborated by my notes of the February 2nd meeting, which were not shown to me at my Senate deposition. These notes refer to the three options outlined above, including the option

to “commence litigation to preserve claim.” I have attached a copy of those notes to this statement, for the record.

Second, RTC’s General Counsel, Ellen Kulka, testified before this Committee earlier this week that she advised Mr. Altman that the RTC would not have fully completed its investigation by the deadline, but that it would be able to file a protective claim, if necessary, to preserve its options. Ms. Kulka testified that she told Mr. Altman that “we would do what we could to file the complaints we need to file, and amend them later if further discovery after that date made it appropriate.” Ms. Kulka said she “clearly told Mr. Altman that we would put ourselves in a position to do the very best we could and that we would be able to file the complaints.”

Thus, what Ms. Kulka reported to Mr. Altman, just prior to our February 2nd meeting, was consistent with what I took away from that meeting—that while the agency would probably need more time to do a thorough investigation and make a final determination, it would be able to file a protective lawsuit to preserve its rights to proceed.

As I stated in my Senate deposition, both the questions I asked and the matters discussed by Mr. Altman were procedural, not substantive in nature. The information communicated by Mr. Altman did not strike me then nor does it strike me now as being secret or confidential, nor did Mr. Altman or his General Counsel, who was present at the meeting, state that this information was confidential. Indeed, I was under the impression that the issues flagged by Mr. Altman on the February 2nd meeting were already a matter of public debate.

Moreover, because it was my understanding that the RTC could file a protective suit, I would have had no reason to inform either the President or Mrs. Clinton that there was no need for them to enter into a tolling agreement—and I am confident that I made no such suggestion to either of them. In fact, to my knowledge, the President and Mrs. Clinton were not asked to sign a tolling agreement. I remind you that just 10 days after the February 2nd meeting, the President signed into law a bill extending the statute of limitations until the end of 1995. Once that happened, the deadline for any decision concerning Madison and the procedural options we discussed at the February 2nd meeting were no longer of any relevance.

Toward the end of the February 2nd meeting, Mr. Altman also stated that he was considering recusing himself from the Madison matter. I, and others present, inquired as to why he was considering recusal, and to the best of my recollection, he said it was because he was a personal friend of the President’s. I am not an expert on such issues, and I think I expressed my view that this did not appear to me to necessitate his recusal. Others present expressed similar views. But we certainly conveyed to Mr. Altman that the decision was entirely up to him.

At the close of the meeting, Mr. Altman indicated that he would further consider the issue and let us know what he had decided. Within a day or two, he informed me that he had decided not to recuse himself.

At all times, I viewed the February 2nd meeting as wholly appropriate. Mr. Altman initiated the meeting. There were Counsels

present from both the Treasury Department and the White House, who never suggested that there was anything inappropriate or improper about the meeting.

The expiration of the statute of limitations with respect to Madison was a matter of public debate. While opinions were expressed on the recusal issue, the bottom line is that the decision was Mr. Altman's to make. Under these circumstances, I believe the meeting comported with all applicable ethical and legal standards. Independent Counsel Robert Fiske, a Republican, has found that no laws were violated by this meeting, and White House Special Counsel Lloyd Cutler, as well as the Office of Government Ethics have confirmed that this meeting violated no ethical standards.

Following the events of early February, to the best of my recollection, the next time I had a discussion with Mr. Altman concerning these matters was on February 23rd, the evening before he testified before the Senate Banking Committee. I don't recall the specifics of the conversation but generally, but generally I recall Mr. Altman informing me that he was considering either before or as part of his testimony announcing his recusal from the Madison matter, and he wanted to know if I had any thoughts on that. I believe I asked him whether any circumstances had changed since early February that would cause him to change his prior decision not to recuse. I recall him saying they had not. And I recall telling him that it would be entirely up to him, but if I had any other thoughts, I would get back to him.

He asked me to call him later that evening, after he returned from an event outside of his office. Rather than wait, I phoned Josh Steiner a short while after my conversation with Mr. Altman. I repeated what I discussed with Mr. Altman and asked Mr. Steiner to convey to Mr. Altman that I had no further thoughts on the subject and that it was entirely up to him whether to announce recusal the next day.

During his testimony on the 24th of February, Mr. Altman did not say he was going to recuse himself from the Madison matter. As you may recall, the news accounts the day after Mr. Altman's testimony focused on his statement at the hearing that he had met with White House officials in early February to discuss the statute of limitations with respect to Madison. As a result, the White House was getting a number of press inquiries about the issue of contacts with Mr. Altman, as well as the fact that he had not recused himself, despite congressional demands to do so. And we were attempting to respond to those inquiries.

At some point during the afternoon of February 25, George Stephanopoulos informed me that he had heard that Mr. Altman had recused himself from the Madison matter, and that he had done so in the course of a conversation with the editorial page editor of The New York Times, without notifying the White House in advance of his decision. Mr. Stephanopoulos and I called Mr. Altman immediately to confirm if that were true. Mr. Altman confirmed these events, and we expressed surprise that he had chosen to announce his recusal to a newspaper editor. We had simply been caught off guard, especially since we had been fielding questions from the press on these issues.



I am aware that Mr. Steiner's diary reflects that we indicated to Mr. Altman that the President was "furious" about these events. As far as I know, Mr. Steiner was not a party to that phone call, and I do not recall making any such statement. Moreover, I would not have any basis for making such statement because I had not spoken with the President between the time I learned that Mr. Altman had recused himself and the time when Mr. Stephanopoulos and I called Mr. Altman.

In closing, I should also add at some point in time I recall briefly informing the President and Mrs. Clinton in separate conversations of the gist of the discussion at the February 2nd meeting. And that Mr. Altman had shortly thereafter decided not to recuse himself. I speak with the President and the First Lady several times a week about a number of matters, and I cannot recall the specifics about these conversations or when they took place. I recall that neither of them had any particular reaction to the information; nor did they ask me to take any action with respect to the recusal issue.

I also recall speaking to the President at some point about the RTC's retention of Jay Stephens. The President expressed concern that such a highly partisan individual could have received such an appointment, but he did not ask me to contact Treasury or the RTC, or to take any other action with respect to the Stephens appointment, nor did I take any.

I have outlined for you the essence of any conversations that I presently recall having with Mr. Altman concerning the RTC's inquiry into Madison. There was nothing in any of my contacts with Treasury officials that was intended to influence or that had the effect of influencing any RTC decision with respect to Madison. Independent Counsel Fiske concluded that there was nothing illegal about these contacts.

In addition, both White House Special Counsel Lloyd Cutler and the Office of Government Ethics reviewed the record on these contacts and have concluded that there was nothing unethical about them.

I will answer any questions you may have about these events.

The CHAIRMAN. Thank you. Mr. Lindsey, why don't you go next here, please.

**BRUCE R. LINDSEY, ASSISTANT TO THE PRESIDENT AND  
SENIOR ADVISOR, WASHINGTON, DC**

Mr. LINDSEY. Thank you, Mr. Chairman.

Mr. Chairman and Members of the Committee, my name is Bruce Lindsey. I am Assistant to the President and Senior Advisor. I am also from Arkansas and have known President Clinton for over 25 years. I am therefore the person in the White House who generally handles press inquiries related to Arkansas issues.

I welcome this opportunity to share with this Committee and with the American people the facts as I know them concerning communications I had with Treasury Department officials in which the RTC investigation of Whitewater or Madison Guaranty was discussed.

These conversations occurred after information about RTC referrals involving Madison Guaranty were leaked to the press. My conversation with Treasury officials centered solely around what the

press was reporting and how, if at all, we should respond. It was always my understanding that the Treasury officials were simply passing along what they were hearing from the press. In fact, to this day, I do not know the contents of the criminal referrals.

Mr. Chairman, I am not aware of any law, ethical rule or principle of common sense that suggests that one Administration official cannot alert another Administration official to the contents of reporters' questions. To suggest that something improper occurred is simply to ignore the facts. Let me briefly state those facts.

In late September or during the first few days of October 1993, I had a short conversation with Associate White House Counsel Cliff Sloan, and perhaps Associate White House Counsel Neil Eggleston, in which I learned that there had been RTC referrals relating to Madison Guaranty and that the Clintons were incidentally mentioned in the referral document, but not as targets or subjects. I have no notes of this first conversation, but my best recollection is that it was quite brief and that Cliff Sloan alone spoke with me.

It was my understanding that leaks had occurred or were imminent and that members of the press were or would be asking about the referrals. I assumed that they wanted me to know this information so that I would not be surprised if I received calls from the press about these referrals. In fact, I did receive such press calls in the coming days and did respond to them.

A few days later, on or about October 4, 1993, I received a call from Jim Lyons, a Denver lawyer who had been involved in the 1992 campaign, reporting on press inquiries he and others had received which referenced the criminal referrals. I was traveling with the President at the time and briefly mentioned the information to him. I didn't suggest, nor did the President ask, that any action be taken, and none was.

The next conversation I had about this matter occurred on October 7 or 8, 1993, a few days after my discussion with the President, and was with both Cliff Sloan and Neil Eggleston. My notes, which have been provided to the Committee, reflect that I was informed in this conversation of specific press inquiries, including information from the press that the apparent criminal referrals included a reference to Arkansas Governor Jim Guy Tucker. I did not have any conversation with the President regarding this conversation.

The next communication I know about between White House and Treasury officials on this subject occurred on October 14, 1993. On that day, I and several of my colleagues met with officials from the Treasury Department at the White House to discuss additional press inquiries. This meeting took place after Jack DeVore, a press official at the Treasury Department, had received a call from Jeff Gerth of The New York Times about the alleged criminal referrals, including a suggestion that the referrals were being "bottled up" in Washington, rather than going to the U.S. Attorney's office in Little Rock.

My understanding was that Mr. DeVore was seeking guidance on how to respond to the press inquiry. He told us that he had checked and found that the referrals had initially been sent to Washington, but that, well before the reporter inquired, they had been forwarded to the U.S. Attorney's office. Mr. DeVore wished to

confirm these facts to the reporter before an incorrect story was written on the subject. He indicated it was standard practice for the RTC to confirm the existence of a criminal referral.

I expressed some surprise at this and suggested that Mr. DeVore, rather than confirming the existence of the referrals, should simply respond to the reporter by stating that whatever had been sent from the RTC had been forwarded to the U.S. Attorney's office prior to the reporter's inquiry. No one discussed or suggested that any action should be taken to try to influence the matters that were the subject of the referrals. To my knowledge, other than my checking campaign records with regard to one of the questions the reporter was asking, nothing further was done after October 14, other than Mr. DeVore responding to the reporter's inquiry.

In early December 1993, I received faxes from two Treasury Department officials of press-generated Freedom of Information Act requests for Madison documents. These came to me without comment, and I took no action in response to them.

The final so-called Whitewater-Treasury contact in which I was involved occurred sometime in February 1994, and again was precipitated by a press inquiry: A reporter contacted the press office at the Treasury Department about a meeting between White House and Treasury officials at which there was a briefing on the RTC civil statute of limitations. The reporter said that she understood that, at the meeting, a White House official attempted to pressure the Treasury Department to give a similar briefing to the private attorneys involved in the matter.

The press inquiry to the Treasury Department was passed along to the White House press office who passed it along to me. Since I had not attended any White House-Treasury meeting, I called Roger Altman, whom the reporter indicated had attended the meeting, and asked him whether such a meeting had occurred and, if so, what had happened. Mr. Altman told me there was a meeting in early February at which he and other Treasury officials briefed White House officials on the statute of limitations issue.

Mr. Altman told me that a White House official had asked him whether a similar briefing would be given to the private attorneys in the matter. Mr. Altman said that he had checked with an RTC attorney who indicated such a briefing would be given at an appropriate time but not now. Mr. Altman told me that no one at the meeting instructed him to do anything. I advised Mr. Altman to respond to the press inquiry accordingly, and I took no further action.

I have now informed this Committee of all White House-Treasury Department communications in which I was involved. I have also produced my contemporaneous handwritten notes and memoranda relating to these matters, which I believe fully reflect what I have just recounted.

Before I conclude, Mr. Chairman, let me restate as clearly as I can: None of these conversations, nor any other action that I am aware of, involved any effort by anybody to influence the conduct of any investigation. They were discussions advising us of press inquiries and discussions about how to respond to them. Nothing improper occurred.

I will be happy to answer any questions the Committee may have.

The CHAIRMAN. Thank you. Mr. Stephanopoulos.

**GEORGE R. STEPHANOPOULOS, SENIOR ADVISOR TO THE PRESIDENT FOR POLICY AND STRATEGY, WASHINGTON, DC**

Mr. STEPHANOPOULOS. Thank you, Mr. Chairman.

Mr. Chairman and Members of the Committee, my name is George Stephanopoulos and I serve as Senior Policy Advisor to the President. My testimony concerning matters which are the subject of these hearings will focus mainly on two brief telephone conversations, both of which occurred on February 25th. The first occurred with Josh Steiner, Treasury Chief of Staff, concerning Roger Altman's decision to announce his recusal from decisions concerning Madison Guaranty. Mr. Steiner was my regular point of contact at Treasury for obtaining information that affected Administration policy.

In the course of that conversation, I asked about the decision to hire former U.S. Attorney for the District of Columbia, Jay Stephens—a vocal, persistent and public political opponent of the President—to handle the RTC inquiry of Madison. I was puzzled at how he could be hired, given his obvious inability to be impartial, and I asked how that decision was made.

As I have said publicly in the past, I did blow off steam in that conversation, based on my belief that Mr. Stephens had and has a conflict of interest, that he could not be an impartial investigator. Mr. Steiner informed me that the decision had been made by an independent board. That ended the conversation. I took no further action.

I believe later that day I had a conversation with Harold Ickes and Roger Altman during which the subject of his recusal was discussed, specifically, as I recall, that he had informed a New York Times editor that he had decided to recuse himself. I was concerned that because of the manner in which he had chosen to announce his decision, the Administration would, for a time, be maintaining inconsistent public positions on this issue. I suggested that, as a courtesy to the President, Mr. Altman write a personal note explaining his decision. I took no further action concerning this issue.

Thank you very much.

The CHAIRMAN. Mr. Podesta, why don't you give us your statement now.

**JOHN D. PODESTA, ASSISTANT TO THE PRESIDENT AND WHITE HOUSE STAFF SECRETARY, WASHINGTON, DC**

Mr. PODESTA. Thank you, Mr. Chairman.

Mr. Chairman and Members of the Committee, my name is John Podesta. I am an Assistant to the President and White House Staff Secretary, a position I have held since inauguration day, January 20, 1993. My principal duties involve managing the paper flow going to and from the President.

Earlier in my career, I spent more than 9 years on the staff of two Senate Committees—as Counsel to the Judiciary Committee and for more than a year as Chief Counsel to the Committee on Agriculture, Nutrition and Forestry. As a result of my Capitol Hill experience, I have from time to time been asked at the White

House to work on legislative and congressional matters. It is in this context that my connection to the matter before this Committee took place.

On or perhaps just before February 14, 1994, I was asked by Mack McLarty and Pat Griffin, the Director of White House Legislative Affairs, to work on upcoming hearings involving RTC matters. Mr. Griffin had recently joined the White House staff and was concentrating his time and attention on passage of the President's legislative program, principally Health Care reform.

In anticipation of upcoming RTC Oversight Board hearings, we expected questions on Madison Guaranty to be raised. My task, as I saw it, was to analyze what was likely to take place at the hearings and to recommend ways to ensure that the hearings were fair and balanced. This assignment was in addition to my regular duties, and did not consume the majority of my time. As best as I can recall, this is a summary of what occurred over the following days.

On February 15, I met with Mike Levy, Assistant Secretary of the Treasury, and discussed the expected RTC Oversight Board hearing in the Senate Banking Committee. Mr. Levy briefed me on the composition and functions of the RTC Oversight Board. During the remainder of that week, Mr. Levy and I had several telephone conversations concerning the hearing. We never discussed the underlying investigation of Madison, nor did I discuss that subject with anyone else at Treasury or the RTC.

Mr. Levy and I did briefly discuss the fact that Roger Altman would need to be prepared to answer questions about recusal in light of the fact that Ricki Tigert, our nominee to chair the Federal Deposit Insurance Corporation, had been pressured on recusal during her confirmation hearings. I did not try in any way to influence the substance of Mr. Altman's answer on the subject of recusal. My discussion with Mr. Levy only went to the fact that Mr. Altman needed to be prepared to respond to questions on this subject.

In the several days before the hearing, I also spoke by telephone on two or three occasions to Josh Steiner, Secretary Bentsen's Chief of Staff. At this time it is difficult for me to separate these conversations or to remember them with precision. I believe I initiated the first call to ask Mr. Steiner to encourage Secretary Bentsen to take a prominent role at the hearing. Again, this was to ensure that the hearing was broadly focused on our Administration's overall handling of the S&L cleanup and to contrast that record with the record of previous Administrations.

About this time I became aware that Mr. Altman had met on February 2 with White House staff. I believe I raised with Mr. Steiner the fact that Mr. Altman probably would be asked a question about whether he had consulted with the White House on the Madison matter, and that he needed to be able to discuss the February 2 meeting in response to such a question. I did not try to influence the substance of Mr. Altman's response. Before the hearing, Mr. Steiner also told me that Mr. Altman planned to put in his opening statement the fact that he intended to leave the RTC when his Vacancy Act term expired at the end of March.

In the several days following Mr. Altman's February 24 testimony, I spoke to Mr. Steiner on three or four occasions. On February 25, Mr. Steiner told me that Mr. Altman had recused himself

from Madison matters. Mr. Steiner also told me about the procedures the RTC went through in hiring Jay Stephens, the former Republican U.S. Attorney, to pursue RTC civil claims arising out of the Madison failure.

Finally, following a meeting on March 1 at the White House at which Mr. Nussbaum, Mr. Klein, Mr. Eggleston, Mr. Sloan, Mr. Lindsey, and I discussed Mr. Altman's testimony, I spoke with Mr. Altman about the possible need to supplement his testimony on three points—first, how the February 2nd meeting was arranged; second, the fact that the recusal was discussed at the February 2nd meeting; and third, whether anyone from the RTC had advised the White House of the criminal referrals involving Madison.

Mr. Altman and I had what in my view was a constructive conversation on the three points, which resulted the next day in Mr. Altman's letter supplementing the record concerning the fall meetings. Mr. Altman later sent a letter on the recusal point. I had no subsequent conversations with Treasury or RTC personnel that related in any way to Madison Guaranty.

That concludes my prepared remarks and I look forward to answering your questions.

The CHAIRMAN. Let me pick up right where you left off. The discussion you had on the phone with Mr. Altman where you made the three points as to omissions in his testimony that he was going to have to fill in, what was the date of that?

Mr. PODESTA. March 1.

The CHAIRMAN. Did I understand you to say that you mentioned recusal as one of the three items?

Mr. PODESTA. I did.

The CHAIRMAN. Are you surprised, in his letter of March 2 that he sent to us, that recusal is not mentioned there? Or on March 3? There's another letter that follows.

Mr. PODESTA. Mr. Chairman, I think I need to give you something of a long answer to that, if you'll bear with me. It really, I think, needs to be answered in the context of all three points. I mentioned—

The CHAIRMAN. I'm going to let you do that, but I want to make sure that I've established the predicate for the question that I want you to respond to.

Mr. PODESTA. I understand.

The CHAIRMAN. I want to be clear in my mind when you had the conversation with Mr. Altman and you mentioned these items, that one of them was the recusal issue. This happened on—

Mr. PODESTA. March 1.

The CHAIRMAN. On March 1.

Mr. PODESTA. Let me give you a short-winded answer and then I can give you a long-winded one. Of the three points we discussed, these had been the subject of a meeting, as I mentioned, between four members of the Counsel's Office and Mr. Lindsey and I through the course of the afternoon on March 1st. When I talked to Mr. Altman, I think that those of us on the White House side viewed those three issues somewhat differently. With regard to the first question about how the meeting had been arranged, it was Mr. Nussbaum, I think, who was particularly concerned that Mr.

Altman had said that he had asked for a meeting with Mr. Nussbaum.

And I think the testimony has shown that he believed that he called Mr. McLarty to set up the meeting, but then asked for Mr. Nussbaum to attend. I think all of us in the White House, with perhaps the exception of Mr. Nussbaum himself, felt that was a matter that would probably not need to be supplemented. It didn't seem, in our view, to be something the Committee would be particularly concerned about or that there would be a strong press reaction to.

The CHAIRMAN. Let me do this. I'm going to give you——

Mr. PODESTA. I'm going to rank these.

The CHAIRMAN. I just want to talk about recusal right now. I'd like to leave the other two aside because I want to pose a question to another witness here on this point.

Mr. PODESTA. On the recusal point, I think it was our view that the better course was to supplement the testimony and mention recusal, but that it was a judgment call that should be left to Mr. Altman on that point.

The CHAIRMAN. The main point I want to establish here is that you flagged that for him on March 1st, and you have no doubt in your mind about that.

Mr. PODESTA. I have no doubt in my mind about that.

The CHAIRMAN. Mr. Ickes, in the meeting on February 2nd, yesterday Mr. Eggleston estimated that he thought about half the meeting was spent on the recusal issue. What would be your recollection on what percentage of the time of the meeting would have been spent on the recusal issue?

Mr. ICKES. Senator, as I sit here today, it's my best recollection that probably three-quarters of the meeting was spent on the statute of limitation, the balance on recusal.

The CHAIRMAN. When I look at your handwritten notes, which have been transcribed and printed on a piece of paper, you have that, I assume?

Mr. ICKES. I have that if you'll bear with me a moment. Yes, I have it.

The CHAIRMAN. In going through your transcription of notes, I don't find anything about recusal. Can you tell me why that is?

Mr. ICKES. I can't explain why not. As I say, I think—my recollection is that it came up at the latter part of the meeting, not that much time was spent on it, Senator. The bulk of the meeting was spent on the issue of the statute of limitations.

The CHAIRMAN. Wouldn't it be reasonable though, the fact that it did come up and there was some discussion about it and different points of view, you would expect that it would show up on your notes as what happened at the meeting?

Mr. ICKES. One might think so, but it's not—it's not—I don't think it's inexplicable that I didn't put it down there. As I say, it was a matter that came up toward the last of the meeting. I don't recall much time being spent on it.

The CHAIRMAN. On page 7 of your testimony, you say here toward the end of the February 2nd meeting, Mr. Altman also stated that he was considering recusing himself from the Madison matter. Can you remember how he said it? What did he say?

Mr. ICKES. As I recall, Senator, toward the end of that meeting, he indicated he was giving consideration whether to recuse himself or not and there ensued, I don't think a very long—

The CHAIRMAN. Before we go to what followed, I want to try to get as clear a memory as you have as to what he would have said.

Mr. ICKES. I can't—as I've said, Senator, before the Senate counsels and in other situations in connection with these hearings, I don't have an exact recollection word for word. I recall the gist of it was that he said toward the end of the meeting that he was considering recusing himself.

The CHAIRMAN. Now, he's testified to us here that he had reached the decision to recuse himself before this meeting. Therefore, the presumption is that he came in and said that to all of you that were gathered at that meeting, that he had reached the judgment to recuse himself. Are you saying that he did not say that?

Mr. ICKES. It is my best recollection, as I sit here today, Senator, that I do not recall him saying that he had decided to recuse himself. I recall that he was considering recusing himself.

The CHAIRMAN. Let me just read to you what was on his briefing sheet that he had and had gone over before he went in, and I will read the text, "I have decided that I will recuse myself from the decisionmaking process as interim CEO of the RTC because of my relationship with the President and Mrs. Clinton." This document supports his recollection of his decision, and his preparation and intention to go in and to say that. You say that when he got there, he did not say that.

Mr. ICKES. I can only give you my best recollection, Senator.

The CHAIRMAN. Now, after he said whatever precisely it was that he said about recusal, did he then, did he put it in a form where he said I'd like your opinion?

Mr. ICKES. As I said, Senator, I don't recall word for word. There was some discussion that followed his statement that he was considering recusal.

The CHAIRMAN. Here's my point, and I think you will understand where I'm going here. I'm wondering if he made the comment in a form in which he was, in a sense, putting you on notice, or whether he made the comment from the point of view saying, I'm thinking about this and now I'd really like your opinion on it so let me hear from all of you as to what your reaction is.

Mr. ICKES. I don't recall him putting that, certainly not in the latter form. He stated, as I recall, the gist of it was that he was thinking about recusal, and there was some discussion following that statement.

The CHAIRMAN. I'm going to run out of time, but the interesting part of this is the discussion that then follows. Who said what and in what order and in what manner. So I'd like you, before my time expires, to tell me who was the first person that responded insofar as you can recall?

Mr. ICKES. Senator, this happened a long time ago. A lot of things have happened in between that. I have a very busy schedule, as do you all. Much has merged from what has been discussed in the press and otherwise. I cannot recall the specifics of who spoke first, who spoke second, nor word for word what they said. I can only give you the gist.



The CHAIRMAN. I would expect that type of answer, frankly, I think for most of us. What did Mr. Nussbaum say?

Mr. ICKES. As I recall, Mr. Nussbaum, as did I, as did others, asked what the basis for his thinking that he might want to recuse himself, and as I recall, Mr. Altman basically said that he felt that he had a—not that he felt that he did, in fact, have a very long friendship with the Clintons, with both the President and Mrs. Clinton, and thought that that might be a basis for recusing himself, but it is my very distinct recollection, Senator, that he had not yet decided. It is also my very distinct recollection that all parties at that meeting said that it is up to him to decide whether or not to decide whether he would recuse himself.

The CHAIRMAN. I'm going to yield right now with just this one question. Did anybody speak up and support his intention to recuse himself?

Mr. ICKES. Again, Senator, I don't recall any—

The CHAIRMAN. There were three other people there. There were three people, as I understand it; Nussbaum, Williams, yourself and Eggleston. That's the universe of people. Did anybody—you've said what you said. I think you said what Nussbaum said. Ms. Williams just testified that she thought it was not a good idea and so stated in the meeting. I can't, out of that group, find anybody who would have said yes, we agree with your decision.

Mr. ICKES. First of all, Senator, I don't think that there had been a decision to agree with, number one. Number two is it is my very distinct recollection that everyone said there were different views given, but everyone said at bottom, Roger, it's up to you to decide whether or not you're going to recuse yourself.

The CHAIRMAN. We can come back to that.

Senator D'Amato.

Senator D'AMATO. Thank you, Mr. Chairman.

Mr. Stephanopoulos, Josh Steiner, in his diary, recalls—it says "Roger Altman decided to recuse himself. Harold and George then called to say that BC," Bill Clinton, "was furious." Do you recall saying that? Do you deny saying that?

Mr. STEPHANOPOULOS. Well, first of all, to the best of my recollection, Mr. Steiner was not on that phone call. That was a phone call to Mr. Altman, I believe, so I don't know why he wrote that in his diary. I would also add—

Senator D'AMATO. I'm asking, do you deny it?

Mr. STEPHANOPOULOS. I certainly don't remember saying that.

Senator D'AMATO. Do you deny saying that?

Mr. STEPHANOPOULOS. Again, I don't believe I said—I know at the time I had not spoken to the President about this matter.

Senator D'AMATO. Do you deny making that statement?

Mr. STEPHANOPOULOS. I simply can't deny what I don't remember. I have no recollection of that at all.

Senator D'AMATO. You have no recollection—here's Roger Altman. He's saying—and he's obviously indicated that Josh Steiner, at one time, I think, was his assistant; is that correct?

Mr. STEPHANOPOULOS. He may have been at one time. At the time of this conversation he was Chief of Staff of the Treasury Department.

Senator D'AMATO. I understand that one time he was the assistant to Mr. Altman; is that true?

Mr. STEPHANOPOULOS. Yes, I believe he was.

Senator D'AMATO. And his notes say very specifically "Harold and George then called to say"—and this is Roger Altman after he decided to recuse himself to say that—"Bill Clinton was furious." Do you deny making that statement?

Mr. STEPHANOPOULOS. I simply don't remember saying that at all, sir.

Senator D'AMATO. You don't remember. You don't remember making that statement or you don't remember?

Mr. STEPHANOPOULOS. I don't remember saying that statement. It's highly unlikely that I made that statement because I had not spoken to the President that day about this.

Senator D'AMATO. Let me continue. "They also asked how Jay Stephens, the former U.S. Attorney, had been hired to be Outside Counsel on this case. Simply outrageous that the RTC had hired him, but even more amazing, even more amazing when George then suggested to me that we needed to find a way to get rid of him."

Now, did you make that statement?

Mr. STEPHANOPOULOS. As I said, Senator, in that phone call, I asked how Jay Stephens came to be hired.

Senator D'AMATO. Now, this is a phone call that you made to who?

Mr. STEPHANOPOULOS. This is a phone call to Josh Steiner. I'm not certain who called whom.

Senator D'AMATO. Now, you're talking to Josh Steiner.

Mr. STEPHANOPOULOS. This is a phone call with Josh Steiner.

Senator D'AMATO. And he says even more amazing—

Senator SARBANES. Would you yield so I can be clear on one thing?

Senator D'AMATO. Certainly.

Senator SARBANES. The reference that the President was furious, which is in Steiner's diary, which came—according to Steiner, was in a conversation with Altman that you all had. You don't remember that, but it's that conversation; is that right?

Mr. STEPHANOPOULOS. I know I had two phone conversations that day, Senator. I don't know what he's referring to in the diary. I can't speak to that. I know that in the conversation with Mr. Altman, I did suggest to Altman that as a courtesy to the President, he write the President a note explaining his decision about the manner of the recusal.

Senator SARBANES. But this conversation now—

Senator D'AMATO. The direct one.

Senator SARBANES [continuing]. Is a direct one between you and Steiner.

Mr. STEPHANOPOULOS. Yes, there were two separate conversations.

Senator SARBANES. I just wanted to be clear about that.

Senator D'AMATO. So now we're focusing—my question goes to your conversation with Josh Steiner.

Mr. STEPHANOPOULOS. Right.

Senator D'AMATO. He says that "even more amazing." In other words, you had expressed your concern that Jay Stephens was hired. Apparently he agreed because he says "simply outrageous," and he said, "but even more amazing is when George then suggested to me that we needed to find a way to get rid of him." Do you deny making that statement?

Mr. STEPHANOPOULOS. I don't remember making that statement. As I said, Senator, in the phone conversation, I asked how Mr. Stephens came to be hired. I did believe it was a conflict of interest, and I did blow off steam.

Senator D'AMATO. I understand that, but that's not my question. My question is, do you deny making that question, yes or no?

Mr. STEPHANOPOULOS. That's not the way I remember the conversation, Senator.

Senator D'AMATO. So the answer is no.

Mr. STEPHANOPOULOS. That's not the way I remember the conversation.

Senator D'AMATO. Let me try again. This is a conversation that you had with Mr. Steiner relative, number one, to Mr. Stephens being hired. And second, he says more amazing, when George then suggested to me that we needed to find a way to get rid of him, he goes on because you and Mr. Steiner are confidants; is that true?

Mr. STEPHANOPOULOS. We're friendly.

Senator D'AMATO. Friendly. You worked together over the years.

Mr. STEPHANOPOULOS. At different times over the years, yes.

Senator D'AMATO. "Persuaded George that firing him would be"—listen to this—"incredibly stupid and improper." Now, my question is, do you deny making the statement that we needed to find a way to get rid of him, "him" being Mr. Stephens?

Mr. STEPHANOPOULOS. In the conversation I asked how Jay Stephens came to be hired—

Senator D'AMATO. I understand that. That came up before. Did you or did you not say to him that we have to find a way to get rid of him?

Mr. STEPHANOPOULOS. I have no memory of saying that, Senator.

Senator D'AMATO. You have no memory. Did he tell you that it would be "incredibly stupid and improper"?

Mr. STEPHANOPOULOS. Mr. Steiner told me that Mr. Stephens had been chosen by an independent board and that was the end of the conversation.

Senator D'AMATO. That's not the question. Did he tell you that it would be stupid to fire Mr. Stephens?

Mr. STEPHANOPOULOS. I don't remember that at all, sir.

Senator D'AMATO. OK. Mr. Ickes, reading your testimony in a sworn deposition that you've given to this Committee, I'm going to quote, and this is relative to the meeting on February 2nd, "I, among others, asked him"—"him" being Roger Altman—"a number of questions about the details of the statute of limitations and to some extent the progress of the inquiry being conducted by the RTC."

Is that your testimony and is it true?

Mr. ICKES. There were questions asked, yes, Senator.

Senator D'AMATO. So that's true.

Mr. ICKES. There were questions asked, Senator.

Senator D'AMATO. No. Is that—I read you your testimony. Listen to your testimony. This is your testimony. “I, among others, asked him a number of questions about the details,” that’s you asking—you’re saying that you “asked Mr. Altman details of the statute of limitations and to some extent the progress of the inquiry being conducted by the RTC.” Is your testimony true?

Mr. ICKES. If that’s my testimony, I stand by it.

Senator D'AMATO. You went on. You said “what he discussed there was,” as Mr. Altman said, “that it was his view, based on information from his sources”—I don’t think he delineated them, but I assumed one of them was the General Counsel of RTC—“that the investigation was going to take a longer period of time to conclude and that it might not be concluded until after the expiration of the statute of limitations.” Is your testimony true?

Mr. ICKES. If that is my testimony, I stand by it.

Senator D'AMATO. That is your testimony. Let me continue.

Mr. ICKES. Senator, could you tell me what page you’re reading from?

Senator D'AMATO. Yes, certainly. Page 121.

Mr. Chairman, I’m going to need several minutes to complete this, but I assure my colleagues that I will be as indulgent, if not more, and will yield back time later on. I’d like to just finish this line of inquiry.

The CHAIRMAN. Is there objection? The Chair hears none.

Senator D'AMATO. Do you have that in front of you now?

Senator KERRY. I’m not going to object, but I would like to have an understanding—obviously, there’s a certain freshness to a certain number of questions here but I think there has also been a certain staleness to a certain number of questions with respect to the last panel, which I think we might agree went on too long. So I would hope we could all agree that once an area has been covered and we’ve essentially got the facts, none of us need to beat it to death.

Senator D'AMATO. I agree with my learned friend.

Mr. Ickes? Next page, page 122, line 15. This is your testimony: “The purpose of this meeting and the focus of his discussion was the relationship of time that he felt this investigation might be wrapped up at and he said in so many words that it was his understanding”—being Altman—“that the investigation probably would not be concluded and that a determination could not be made by the RTC’s General Counsel as to whether there was a basis for a civil claim until after the expiration of the statute of limitations has applied to the particular investigation.” Is your testimony true?

Mr. ICKES. That is my testimony.

Senator D'AMATO. Is it true?

Mr. ICKES. Yes.

Senator D'AMATO. Would you turn to page 124, line 9. “I don’t know whether it was public knowledge or not. I assumed that it was—when you say ‘public,’ did the public in general, I didn’t think it was. I didn’t know whether it was, but it was my assumption that this was information that was not known to the public in general and probably very few people inside the Administration.” Is your testimony true?

Mr. ICKES. That is my testimony.

Senator D'AMATO. It is true. Is it true?

Mr. ICKES. Yes.

Senator D'AMATO. Thank you very much, and I thank my colleagues.

The CHAIRMAN. Senator Sarbanes—is Senator Sarbanes just in the back room or has he stepped away?

Senator Shelby.

Senator SHELBY. Thank you, Mr. Chairman.

Mr. Podesta, did you help prepare Mr. Altman for the February 24th oversight hearing for this Banking Committee?

Mr. PODESTA. No, Senator.

Senator SHELBY. You were not involved in briefing notes or involved in any way?

Mr. PODESTA. Other than the statement I gave, which is that—

Senator SHELBY. What was that?

Mr. PODESTA. I had a very brief conversation with Mike Levy, who is the Assistant Secretary of Treasury, saying that they'll probably get questions about recusal and he should be prepared to answer them, and I believe I had a brief conversation with Josh Steiner, fairly shortly after I learned of the February 2nd meeting, saying that he was likely to be asked about any contacts he had with the White House on Madison, and that he should be prepared to answer a question about it.

Senator SHELBY. Mr. Podesta, you called Mr. Altman about the White House concerns about his testimony before this Committee?

Mr. PODESTA. I did.

Senator SHELBY. When did you call him?

Mr. PODESTA. March 1.

Senator SHELBY. How many days after his testimony?

Mr. PODESTA. He testified on Thursday. That would be the following Tuesday.

Senator SHELBY. What did you relate to him about the concerns? What did you say to him, basically what did you say?

Mr. PODESTA. We had a 5- or 10-minute conversation. We talked briefly about setting up the February meeting. I think we both concluded that the testimony didn't need to be supplemented in that regard. We talked about recusal at some greater length, and then finally we talked—we approached the subject of Senator Bond's questions on how the White House became aware of the RTC criminal referrals.

Senator SHELBY. Specifically, what did he say about his failure to mention the recusal issue before this Committee?

Mr. PODESTA. He said—to the best of my recollection, he said that it had been inadvertent, it had been in his briefing notes—let me start earlier. I believe he said that it had been raised with him at Treasury.

Senator SHELBY. Were you aware of—

Mr. PODESTA. And it had been inadvertent. It had been in the note, and that he was thinking about it.

Senator SHELBY. Did you know that he had had about 12 hours of preparation for the hearing?

Mr. PODESTA. I did not.

Senator SHELBY. But you knew he spent time preparing.

Mr. PODESTA. I suppose—I assumed maybe, rather than know, that he generally prepared, but I did not have any idea what the preparation had been.

Senator SHELBY. Down at the White House, you all were very aware of this oversight hearing regarding RTC.

Mr. PODESTA. We were aware of it.

Senator SHELBY. It was not a run-of-the-mill hearing, was it?

Mr. PODESTA. We assumed it would be used as an opportunity to get into Madison. We wanted it to be fair and balanced.

Senator SHELBY. If Mr. Altman—have you seen the letters that Mr. Altman sent to this Committee supplementing his testimony? I believe it's three or four of them.

Mr. PODESTA. I have. The letter on the 11th and 21st, I saw briefly in my Senate deposition. That was the first time I had seen them.

Senator SHELBY. If Mr. Altman testified originally before this Committee as to what is contained in those letters cumulatively, could you tell me whether you would still have the same concerns that you did with the accuracy of his testimony? In other words, you had concerns with the accuracy of what he said—

Mr. PODESTA. I think the sum of those four letters address the concerns we had identified on March 1st.

Senator SHELBY. Mr. Podesta, you're familiar—I guess everybody in the world is probably familiar now with Mr. Steiner's diary of what he kept.

Mr. PODESTA. Again, I think the first time I saw it was in my House interview on the matter. They showed it to me.

Senator SHELBY. So you're familiar. Everyone is familiar.

Mr. PODESTA. Generally speaking.

Senator SHELBY. Were you at the meeting—were you at one of the meetings at the White House where Mr. Altman came down to talk to Mr. Nussbaum? Were you not at one of the meetings?

Mr. PODESTA. No.

Senator SHELBY. You never went to any of those meetings?

Mr. PODESTA. No.

Senator SHELBY. Did you ever talk to him about recusal before his appearance before this Committee's oversight hearing?

Mr. PODESTA. Are we talking about Mr. Altman?

Senator SHELBY. Uh-huh.

Mr. PODESTA. No.

Senator SHELBY. It was never brought up.

Mr. PODESTA. I never talked to Mr. Altman before his appearance. Let me put that in context. I never talked to Mr. Altman about his appearance at this Committee or anything having to do with any of his testimony. Mr. Altman, as you know, is in and out of the White House. I see him on a lot of other matters.

Senator SHELBY. Have you ever talked to Mr. Nussbaum about Mr. Altman's recusal, in other words, have a conversation with Mr. Nussbaum?

Mr. PODESTA. Yes. Certainly on March 1st.

Senator SHELBY. According to what we've learned here, Mr. Podesta, of what you have said—and you can correct the record if I say it wrong—that Nussbaum told you that he had told Altman only to recuse himself if he was legally required to do so and he

should not recuse himself if it was a matter of discretion. Did he use the word “legally”?

Mr. PODESTA. I don't think that's my testimony, Senator.

Senator Shelby. You've never said that?

Mr. PODESTA. I don't think that's my testimony, but let me tell you what I—let me give you my recollection, which is that Mr. Nussbaum's position was that Mr. Altman should recuse himself if he was legally or ethically required to do so. I think there was some implication that he shouldn't—that it was his view that he shouldn't if he wasn't legally or ethically required to do so.

Senator SHELBY. Were you concerned about the perception of maybe impropriety if he stayed there, rather than a legal aspect of it?

Mr. PODESTA. Was I concerned?

Senator SHELBY. About Altman's—

Mr. PODESTA. In advance of his recusal?

Senator SHELBY. Right.

Mr. PODESTA. I thought, at that point, he had made a decision that he wasn't going to recuse himself, and that he just needed to be prepared to answer questions about it.

Senator SHELBY. Mr. Stephanopoulos, we don't have much time, as you know. You were asked about the Jay Stephens' hiring and I understand that. We know he was the U.S. Attorney, Republican U.S. Attorney. Was the diary entry by Mr. Steiner basically describing your conversation with him, is that fairly accurate?

Mr. STEPHANOPOULOS. Well, again, I can't speak for the diary, sir. In my testimony I described—

Senator SHELBY. Let me read it to you.

Mr. STEPHANOPOULOS [continuing]. The conversation, as I remember it.

Senator SHELBY. I'll share it with you and I'll read an excerpt in a conversation with you, he says, and this is the second page that I have here. He said “it was simply outrageous that the RTC had hired him, but even more amazing, when George”—you—“suggested to me that we needed to find a way to get rid of him,” that he persuaded you that firing him would be “incredibly stupid and improper.” In other words, he calmed you down. Is that a basic outline of what happened?

Mr. STEPHANOPOULOS. Well, the basic outline of what happened is what I said in my testimony, Senator. He gave me the facts, and that was the end of the conversation.

Senator SHELBY. My time is up.

The CHAIRMAN. Thank you, Senator Shelby.

Senator Gramm.

Senator GRAMM. Mr. Chairman, I want to try to cover a lot of ground here, so I'd like to begin with some yes/no answers if I could. I think these are pretty straightforward questions, so let me pose them.

Roger Altman is portrayed in a diary kept by his confidant and the Chief of Staff of the Treasury Department as a tortured man, who is under intense pressure to stay in the Madison investigation. According to a confidential diary, which no one thought would ever be made public, at this fateful meeting on February 2nd with Nussbaum, Ickes and Williams, the White House told Roger Altman

that it was unacceptable that he step aside. In a pros-and-cons, advantages-and-disadvantages memo considering Mr. Altman's taking himself out as the overseer of this investigation of Madison, given that he was a long personal friend and supporter of the President, the number one disadvantage listed is that the White House may feel defenseless prior to the appointment of a new CEO, who would be a political appointee.

In light of this picture of internal agony, we have two sworn statements, that on February 1st Roger Altman goes to Secretary Bentsen's office and says, I'm going over to the White House and tell them that I'm getting out of this whole issue. And so he, having said that, having had three people say under oath that he in essence said it, he goes trooping over to the White House. And he goes into the meeting. He has a memo that says, I'm going to tell them that I am getting out of the Madison investigation.

He comes out of the meeting, and he has changed his mind. He goes back to his office. Then, the next day, he comes back over to the White House. First of all, he asked that people be gotten together to hear that he's going to stay in the investigation. He comes into the office, announces to people that he's staying. He turns around and walks out.

Now, Mr. Ickes, you were in that meeting, both of those meetings. Did you ever hear anybody on the White House staff say that Roger Altman should stay in this investigation? Did you hear anybody ever say to him, don't recuse yourself, you shouldn't recuse yourself, it's not in our interest to recuse yourself, you probably ought not to recuse yourself?

Mr. ICKES. Which of the questions, Senator Gramm, do you want me to answer?

Senator GRAMM. Any one—I want to ask you if you ever heard anybody say to Roger Altman in any way, in any language, "stay in this investigation."

Mr. ICKES. I don't recall anybody saying that. What I recall, Senator, is what I've testified to innumerable times, that there were questions—that he raised questions, indicated he was thinking about it, that there were people who wondered whether or not it was legally necessary or ethically necessary—

Senator GRAMM. But nobody said to him—

Mr. ICKES. The bottom, Senator, it was up to him to make that decision and he did.

Senator GRAMM. But you never heard anybody say to him, don't get out of your oversight capacity on this investigation?

Mr. ICKES. I do not recall anybody saying that.

Senator GRAMM. Now, I know the other three gentlemen weren't at the meeting, but obviously they're involved daily at the White House. They hear these discussions. I'd like to ask each one of them basically a yes or no question.

Have you ever heard anybody at the White House suggest that they ever suggested or were aware that anybody else suggested to Roger Altman that he not remove himself in his oversight capacity of the investigation of Whitewater, even though we knew from these referrals that the President and the First Lady's name had been mentioned?



Mr. STEPHANOPOULOS. Senator, I really wasn't a part of any of those conversations, and as you might imagine, we haven't had a lot of internal discussions about them since then because of all these investigations.

Senator GRAMM. You never heard anybody suggest that they had told him.

Mr. STEPHANOPOULOS. I have not had discussions of that manner.

Mr. PODESTA. No, Senator.

Mr. LINDSEY. No, sir.

Senator GRAMM. Well, I'd just like to say in passing, not since the St. Valentine's Day Massacre in Chicago have we seen a situation where something so dramatic happened, and yet, as in the case of that massacre, nobody heard a shot fired. Roger Altman comes over to give you the message that he's stepping aside, that he believes that he ought to step out of an investigation that could, in some way, involve an old friend, the President, and he leaves having changed his mind. And nowhere is there any evidence whatsoever that anybody suggested to him that he change his mind—

Mr. PODESTA. Senator—

Mr. ICKES. Senator, that is not my testimony and I don't think that's the testimony I've heard. Roger Altman came in and said that he was considering whether or not to recuse himself. And there was discussion about that. At bottom, everyone at that meeting on February 2nd said it was up to him. There were some people who felt they didn't see any legal or ethical necessity, but it was up to him. The second point I would make, Senator—

Senator GRAMM. I'm going to stop you because—

Mr. ICKES. The second point I want to make—

Senator DODD. Let him respond. You've asked him to respond.

Senator GRAMM. I asked a yes or no question.

Senator DODD. He ought to have a chance to explain the answer. Witnesses should have an opportunity to be heard.

Mr. ICKES. Thank you, Senator Dodd. The second point I would make, Senator, it is my recollection that during the course of the meeting on February 2nd, Mr. Altman made it very clear that he was going to follow the recommendations of the Staff of the RTC.

Senator GRAMM. And their recommendation was what?

Mr. ICKES. I don't know what it was or if there has even been a recommendation.

Senator GRAMM. We know from all kinds of sworn statements it was that he step out of the investigation.

Mr. ICKES. No—

Senator GRAMM. And that he didn't.

Mr. ICKES. You and I are talking about different recommendations. The recommendation with respect to the handling of the civil suit or the possible civil suit.

Senator GRAMM. Well, one of the problems we have, Mr. Chairman, is trying to cover a lot of territory, and I don't like to cut anybody off, but we're trying to get to some information.

Mr. Lindsey—

Mr. LINDSEY. Yes, sir.

Senator GRAMM [continuing]. We have several sworn statements that Mr. Altman notified the White House about the mentioning of

the President in at least one of these 9 criminal referrals. We know a call was made on September 29th with that notification. We know that later, you came into the possession of that information. Did you believe then or do you believe now that it was proper for you to have that information?

Mr. LINDSEY. Yes, sir, I believe it was proper to have that information.

Senator GRAMM. As I look at your testimony, it appears you never told the President about this information.

Mr. LINDSEY. That is not correct. As I indicated, on October 4th, I was on a trip with the President. I had a conversation with Jim Lyons, who indicated to me that he and others had had telephone calls from reporters and that the criminal referrals were referenced. After that conversation, I indicated to the President that there were press inquiries about the criminal referrals, that it was my understanding that he was mentioned in those referrals, but that he was not a subject or target. So as soon as there were press inquiries, and as soon as there was some indication that he might get asked or I might get asked, I told the President.

The CHAIRMAN. Senator Gramm, your time is up. I'm going to see to it you have as much time as you need to finish, but I do want to stay within the time limits.

Senator GRAMM. That's fine, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Kerry.

Senator KERRY. Thank you very much, Mr. Chairman.

Mr. Chairman, Senator D'Amato has asked a very important series of questions, perhaps one of the most serious set of questions with respect to this group. I know he's going to come back to them. I'm sure others are because they go to the core of whether or not something improper may or may not have happened. I think we have to look at this a little further. He appropriately asked the witness, is your testimony true? We want to try to get at the facts. When he said to the witness, is your testimony true, I think he meant, is it true to the best of the witness' memory, is this your testimony because when you say is the testimony true, there are others who contradict the testimony of Mr. Ickes, so that we're left trying to determine whether it's true. I mean, the witness can't say that it is, in fact, true.

Senator D'AMATO. Well, I'm referring—and I don't mean to impinge, but if you—

Senator KERRY. I don't want to lose my time.

Senator D'AMATO. I was referring to—

Senator KERRY. If I don't lose my time, I'm happy to have a colloquy on it.

Senator D'AMATO. I'm certain to yield you time and you've been courteous and I think we all have. I was referring to whether or not the testimony he gave was true.

Senator KERRY. Exactly.

Senator D'AMATO. And he said it was.

Senator KERRY. That's what I want to pin down. To the best of his memory.

Senator D'AMATO. No, no, that was sworn testimony that he gave that I—

Senator KERRY. I understand, whether or not the testimony as he delivered it, he still stands by it. I understand that.

Senator D'AMATO. Right.

Senator KERRY. The reason it's important is that the testimony of Mr. Ickes that you specifically referred to, and appropriately, this is a very important area of inquiry. I share the interest of the Senator from New York in it. I just want to understand the playing field as we discuss it. The second part of it referred specifically to Mr. Ickes' testimony on "line 4, page 121, the investigation was going to take a longer period of time to conclude and it might not conclude until after the expiration of the statute of limitations."

Then on the next page to another question, Mr. Ickes said the purpose of this meeting and the focus of this discussion was the relationship of the time that he felt the investigation might be wrapped up and that it was his understanding the investigation would probably not be concluded and a determination could not be made.

Now, if we accept those two statements and find that those are, in fact, true, then there's a serious question about the transfer of that information, both from Treasury to the White House and from the White House to the First Lady, and I think the Senator agrees with me. We're both going in the same direction here.

Without any further discussion on that for a moment, I just want to ask you a question. Do you remember whether or not Mr. Altman, in this meeting on February 2nd when you were all sitting around discussing this, did he read, to your memory, did he read from a prepared list of talking points?

Mr. ICKES. Senator, he had a piece of paper in front of him. I was not sitting close enough to him to see whether there was anything on it. From time to time, during the course of his discussion, he would refer to that piece of paper.

Senator KERRY. Throughout the discussion.

Mr. ICKES. I don't want to say throughout. As I said, from time to time, he would refer to the piece of paper.

Senator KERRY. Let me refer my colleague—all of my colleagues, if I can, to the testimony of Ms. Hanson. In her deposition on pages 16 and 17, Hanson says Mr. Altman started the meeting by going through the talking points, and on page 17 "he read through the items. At one point I expanded on a piece of the discussion on the statute of limitations. I don't recall if it was as Mr. Altman was reading through the talking points or later. But other than that, there was no discussion while he read the talking points."

Now, I ask unanimous consent that the talking points be placed in the record at this point.

The CHAIRMAN. Without objection, so ordered.

Senator KERRY. Turning to the talking points, the second to last talking point, I will read from it: "It is not certain when the analysis will be completed, but it will be before February 28th."

Now, the testimony of Ms. Kulka, the testimony of Mr. Ryan was adamantly, as the people in charge of this investigation, that it could not have been possible for Mr. Altman to say that it might not be concluded because that was not the fact. In fact, his talking points say that it is not certain when the analysis will be completed, and the evidence is that he read his talking points.

In addition to Ms. Kulka, you have Mr. Eggleston, Mr. Nussbaum, Mr. Altman himself and Ms. Williams, all of whom have a different memory from Mr. Ickes. So when we discuss this issue of is the testimony true or obviously true to the best of your recollection, is it possible, Mr. Ickes, and I'm trying to get the facts, not suggest something else, but all of the other evidence is countervailing to this notion that it would have been possible for you to have understood what you understood. Where are we?

Mr. ICKES. I'm not sure of your question, Senator. Are you saying did he read from his talking points?

Senator KERRY. No; I'm asking you whether or not you may have misinterpreted or may have not heard him or that your testimony may be incorrect. That's what you testified to, but in fact what you testified to may not be correct. I don't know.

Mr. ICKES. Senator, all I can do is say I have testified to the best of my memory.

Senator KERRY. Well, then, I guess the rest of the evidence will stand and we'll have to sift through it. You say you believe that's what the testimony was; is that correct?

Mr. ICKES. Senator, all I can say, I've testified to the best of my memory with respect to that meeting. I do not recall word for word what people said. I can only—but I've testified to the gist of it.

Senator KERRY. Is it possible you didn't hear it or had a problem hearing it or anything?

Mr. ICKES. It is possible. I'm completely deaf in my right ear. I don't remember the positions that we were sitting in so is it possible? It is possible.

Senator KERRY. I'm just trying to sort this out. This is a very, very important contradiction and choosing on how people choose to interpret what the Senator has put forth is a very legitimate line of questioning based on what's in front of the Committee. It is a really central issue that we have to try to determine. I think it is one of the only sort of remaining ones to try to sort through this.

Let me shift for a moment. On the recusal issue, I think all of us are still wrestling with this question of a de facto recusal. I understand, Mr. Stephanopoulos, your opinion as of several weeks earlier was that you thought he ought to recuse?

Mr. STEPHANOPOULOS. I wasn't really involved in this, Senator.

Senator KERRY. I realize that, but you had an opinion he ought to recuse.

Mr. STEPHANOPOULOS. Since it's something I wasn't really involved in, I usually look to try to reduce controversy; anything that would distract from the President's major work, to do away with it. So if anybody asked me at the time, just recuse yourself, don't worry about it.

Senator KERRY. Mr. Podesta, after Mr. Altman testified you were surely given the immediate sense that something was wrong, because a White House aid picked up a cellular phone right out of the hearing and called to say this testimony is incorrect. Then you folks had the foresight and I might say the sense of difference between right and wrong to call Mr. Altman and say, hey, you've got a problem with your testimony. Accordingly, I would assume that when you saw the letter, you would have known that his attempt

to clarify to the Committee was still lacking in the very point that you had first been notified about and were concerned about?

Mr. PODESTA. Senator, I'm sure we're going to pursue this, but I didn't see that letter for some time after that, after it had occasion to be sent here, so I wasn't sure what was in that letter.

Senator KERRY. When did you see it, just out of interest?

Mr. PODESTA. I think in April or May.

Senator KERRY. Fair enough. I appreciate that. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Bond.

Senator BOND. Thank you, Mr. Chairman. Mr. Podesta, you testified you were involved in the preparation of Roger Altman for the February 24 hearings; is that correct?

Mr. PODESTA. No, that's the opposite of what I testified to. I testified that I was not involved in the preparation of Roger Altman for the preparation—for those hearings.

Senator BOND. You were involved only in the follow-up after the hearings? Is that the extent of your activity with Mr. Altman as respects—

Mr. PODESTA. That's the only time I spoke with Mr. Altman and I did not—I was not involved in his preparation or, as it were, I testified to the two things I did that might be responsive to your question. One was I did have a conversation the week of the 14th with Mr. Levy saying Mr. Altman needed to be prepared to answer a question on recusal. I think that was in light of the fact that Ricki Tigert had been pressured the week before on that in this Committee. And second, I believe I said to Mr. Steiner, Mr. Altman had to be able to answer a question about whether he had contacts with the White House on Madison, and that he had to be able to answer a question with reference to that February 2 meeting.

Senator BOND. Did you do any preparation or did you make any inquiries about the Madison matter prior to your discussions or in the course of your discussions with Mr. Levy or Mr. Steiner?

Mr. PODESTA. No, Senator. About the Madison matter? No.

Senator BOND. Or the entire Whitewater matter. Had you been involved in discussions that led you to ask that question?

Mr. PODESTA. No.

Senator BOND. To propose that question.

Mr. PODESTA. No. I think that my opening statement really speaks to this, which is that my first involvement in this was around February 14, when I was asked to look at these hearings, what was coming up, and try to suggest ways that we could make sure that they were, as I said, fair and broad and dealt with. I mean, frankly, to give this some context, what we wanted to have happen, I suppose, was that Madison be kept in some perspective, that it be only a small part of the hearings that were coming up on February 24, but I didn't—I didn't know much about Whitewater. I had read a couple newspaper articles. And I knew nothing much about Madison before I talked to Mr. Levy.

Senator BOND. You said we wanted to keep it in perspective. Was that the editorial "we" or was this a sense you were communicating—

Mr. PODESTA. I think that's the editorial "we," but that's what I—

Senator BOND. If you set out on that course yourself.

Mr. PODESTA. If I set out on that course myself.

Senator BOND. Without any prompting from others?

Mr. PODESTA. Mr. McLarty and Mr. Griffin asked me to work on the hearings. I'm a self starter. I suppose I called Mr. Levy. I thought that was the appropriate course of action.

Senator BOND. Did they give you any instructions on what to do about Madison or any of the Whitewater matters, Mr. McLarty?

Mr. PODESTA. No.

Senator BOND. Let me ask, did you send Mr. Eggleston to monitor the hearing?

Mr. PODESTA. No. I knew he was going. I was working on other matters, in fact, other legislative matters that day. I didn't pay attention to the hearing through the course of that day. I had a meeting—I had several meetings during the course of the day. The one thing that Senator Kerry referenced was a cellular telephone call to me. I don't believe that was to me. It could have been to Mr. Stern, my deputy who helped me some on this matter, but I don't remember speaking to Mr. Eggleston at all during the course of the day and I checked my calendar and I was busy working on other matters.

Senator BOND. Did you, thereafter, become the point man in the White House to ensure that the incomplete or inaccurate testimony of Mr. Altman was remedied? Did you have that responsibility?

Mr. PODESTA. Mr. Eggleston did raise the issue with me that he said that he's testified to, that Mr. Altman in describing this meeting had not mentioned recusal. I think at that point, there was a shared responsibility between myself and the Counsel's Office. I thought we had to follow up on this, as a result of the meeting on March 1, to use a term that's been coined in these hearings, I was asked to in the course of that meeting, to make the call to Mr. Altman and raise the three concerns that I've testified to.

Senator BOND. So the meeting on March 1 was with you, Mr. Eggleston, Mr. Sloan. Who else was in that?

Mr. PODESTA. Mr. Klein, Mr. Nussbaum, Mr. Lindsey.

Senator BOND. As a result of that meeting, were you the one who called Mr. Altman?

Mr. PODESTA. I was.

Senator BOND. And what did you advise Mr. Altman in that telephone call?

Mr. PODESTA. I raised the three concerns we had identified. I think that is fair to say that at the conclusion of our brief discussion on the question of who set up the meeting, we both concluded that—the record did not need to be supplemented on that point. On recusal, the group at the White House thought it was a judgment call. It was better to do it. I think that was left with Mr. Altman thinking about it and trying to decide on the best course of judgment.

With regard to the meetings in the fall that were responsive particularly to your questions, I think the group in the White House felt strongly that the record had to be supplemented on that point. Mr. Altman and I had a somewhat truncated conversation, which I testified to in my deposition, and at the conclusion of which he

agreed to review the questions that you had posed with Ms. Hanson.

At that time, when I raised it with him, he said to me that—and I don't know whether I read from the transcript or I paraphrased it, but it was pretty specific with regard to your questions. When he answered that he had no knowledge, he said to me that's correct, I have no knowledge. And I said you may have a duty as an agency witness to supplement the record. He agreed to sit with Ms. Hanson, look at the record and to take appropriate action.

Senator BOND. Did you at that time know of the September and October meetings?

Mr. PODESTA. I had learned about them earlier that afternoon in the March 1st meeting.

Senator BOND. Did you have any responsibility, or did you exercise any responsibility to pursue that point, which you raised, the review of the testimony and the correcting of the record, if necessary?

Mr. PODESTA. I did take some further action. I said I never talked to anyone further in my opening statement at Treasury. The next day, on March 2, I did call to find out whether he had followed up on this point, and I was informed, although I think this was a series of back and forth phone calls, I don't think I ever spoke to anyone at Treasury, but I was informed that evening that Mr. Altman had talked to the Chairman and that a letter had been sent on the point of the fall meetings. I don't believe I knew he talked to you until the course of these hearings.

Senator BOND. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Bond.

Senator Bryan.

Senator BRYAN. Mr. Chairman, I'm always happy to defer to the—to the heir apparent to the Chair.

The CHAIRMAN. He's prepared to have you go next if you're ready.

Senator BRYAN. Thank you.

Mr. Stephanopoulos, I can understand your reaction to the selection of Mr. Stephens. I think that's understandable. I mean, he was an adversary, a critic, and a partisan who actually contemplated a candidacy for the United States Senate from Virginia on the Republican ticket, so I can understand why you would be concerned. And I think any citizen would be concerned to have his or her conduct judged by an individual who had that kind of bias going into the process. So I can understand that. Whether or not you should have made the phone call or not, I think in retrospect, you would agree that probably that wasn't the prudent course of action. But certainly the emotion that was involved, I believe, was entirely understandable and anybody would have reacted in a similar fashion to you.

The thrust of my question goes to the line of questioning between Senator Bond. I am deeply disturbed about Mr. Altman's testimony before this Committee on the 24th and the series of letters that follow. My understanding of the facts are that Mr. Eggleston, prior to the hearing, made a call to Treasury, spoke with Ms. Hanson about this issue and specifically discussed the recusal. Ms. Hanson's briefing notes that Mr. Altman had, preparatory to his testi-

mony before this Committee on the 24th, included, among other things, recusal; that immediately after the hearing, I believe the Chair has indicated that he gave Mr. Altman the opportunity not just to supplement the record, but you had called the Committee back into session to give him an opportunity to supplement the record; that during the course of that hearing, I think the instincts by the White House staff were excellent.

Mr. Eggleston leaves the hearing, makes the phone call on the cellular, which we've heard testimony on, that you thought that there was a problem, and then you yourself on the 1st of March indicate in a conversation to Mr. Altman that you think that there may be a problem with his testimony. Short of hitting somebody between the eyes with a 2-by-4, I don't know how much more clearly it could be imparted to an individual that there's a problem with the testimony and something ought to be done. I think the follow-up letters of the 2nd of March and the 3rd of March do not in any way address what I consider forthright and complete testimony of the Committee.

Let me ask you again more specifically, you had a meeting on the 1st with, as I understand it, Mr. Nussbaum, Mr. Klein, Mr. Lindsey, Mr. Eggleston and Mr. Sloan where this was the subject of discussion. Am I correct, Mr. Podesta?

Mr. PODESTA. That's correct.

Senator BRYAN. Again, without going through the entire thing, give me the essence of it and what the consensus was in terms of what should be done.

Mr. PODESTA. It was different with regard to the issue of the fall meetings and the issue of recusal. Let me be clear. With regard to recusal, I think we tried to decide whether there was a duty to the Committee and a duty to the public to supplement the record.

Senator BRYAN. Are we talking about a legal duty?

Mr. PODESTA. A legal duty.

Senator BRYAN. We're at a legal standard now.

Mr. PODESTA. A legal duty and we tried to decide what the best course of action was. I think with regard to recusal, we thought that from a legal perspective, and I was sitting with four members of the White House Counsel's staff—this is the best of my recollection—that the context of recusal with regard to it being approached in the tolling agreement could be fairly described in his testimony. But that the better course of action was to have disclosed that as his talking points with regard to the answer had done—I'm sorry. That it would have been better to just stick to the talking points and to have said recusal, so I think we all regretted that he didn't do it.

But I think we thought at that point it was a judgment call about whether he should—whether he needed to do it, and that was best left with him. That it was his judgment.

He was the witness. With regard to the fall meetings and specifically with regard to the questions Senator Bond posed, how did the White House learn of the criminal referrals, we thought we had a duty, and that he had a duty to supplement the record on that point, a legal duty.

Senator BRYAN. I must say I think the good judgment that was apparent immediately concurrent with the testimony on the 24th



deserted you because it seems to me there was, in fact, an obligation to correct the record.

Now, did you yourself follow up or designate someone?

As I understood your testimony in response to Senator Bond, you indicated, or perhaps in response to Senator Kerry, some period of time before you actually saw the March 2nd and the March 3rd letters sent by Mr. Altman to the Chairman.

Mr. PODESTA. I believe I saw the March 3rd letter, which was faxed over to the White House from Treasury sometime probably over the following weekend, 4th or the 5th. I never saw the March 2nd letter until sometime quite a bit down the road into the future.

Senator BRYAN. What was your reaction to the March 3rd letter?

Mr. PODESTA. The March 3rd letter I viewed as largely putting on the record the point that the Deputy Counsel, the Ethics Officer, whose name is now escaping me, who testified before the Committee, had been——

Senator BRYAN. Ms. Nolan, I believe.

Mr. PODESTA. Foreman.

Senator BRYAN. Oh, Mr. Foreman.

Mr. PODESTA. Had been consulted in advance of the February 2nd meeting and had essentially cleared it. I think that's the import of that letter.

Senator BRYAN. I think what I find a bit surprising here, that we have all of these initial reactions which I think are absolutely right on. There's a high level staff meeting in which some of the superstars in the White House are gathering to strategize and it seems to me that the ball was dropped. Was there anybody charged with following up to see what was going to be done or did you view at that point that everything had been done?

Mr. PODESTA. No. I think in the normal course of events, he would have continued to follow up. I think this wasn't a normal week. I called Mr. Altman on Tuesday. On Wednesday, we called back. I was informed that a letter had been sent. On Thursday, The Washington Post reported in detail on the two meetings, specifically with regard to Senator Bond's question, that the two meetings had occurred in the fall, that the criminal referrals had been mentioned, that the people who were at the meetings were identified. That's all information the White House provided.

I thought that matter had been taken care of. I assumed his letter went through those details, and that the letter had been—as I say, I've been told that the Chairman had received the letter. On Friday, Mr. Fiske issued subpoenas to the White House and to a number of individuals in the White House. I'll take one step backwards. On Thursday, at that point, Mr. McLarty went to the lengths of issuing a memo putting up a Chinese Wall between the White House and Treasury. There was tremendous criticism of any contact between Treasury and the White House.

Under those circumstances, and especially after Friday, when Mr. Fiske had issued the subpoena, I don't think we wanted to do anything to further complicate the record or that could be essentially criticized for our trying to intervene in testimony that was now being looked into by Mr. Fiske.

Senator BRYAN. Let me just say in fairness—and my time is up—I understand we have the benefit of hindsight. I must say, I find

it somewhat extraordinary after one attempt is made to correct the record, and then a decision is made to send a second letter, that there wouldn't be the sense, hey, let's get it right the second time.

And I would yield.

The CHAIRMAN. I've just asked Senator D'Amato if I could ask one clarifying question here on your point. Maybe I didn't get this right, but do I understand that the information on the meetings on the criminal referrals, that you got that information, and it was given by the White House to The Washington Post? Is that how they got it, or did I misunderstand?

Mr. PODESTA. Excuse me? No, I think the details of the meeting—I don't think The Post knew about the meeting on the 29th. They were pursuing this meeting issue, and I think we——

The CHAIRMAN. See——

Mr. PODESTA. We raised—we gave them that information that there was a meeting on the 29th between Nussbaum, Hanson and——

The CHAIRMAN. But you realize that puts us in a position where it was given to The Washington Post before it was given to this Committee which had asked for it.

Mr. PODESTA. Senator—Mr. Chairman, I actually thought that the reverse sequence had happened. That was my understanding.

The CHAIRMAN. You thought it had been.

Mr. PODESTA. I raised it with Mr. Altman. Mr. Altman was pursuing the matter. I was informed that you had been sent the letter. I assumed you knew all this, frankly.

The CHAIRMAN. But you now know that was not the case. It was in the other sequence.

Senator Bennett.

Senator BENNETT. Thank you, Mr. Chairman.

Mr. Podesta, I have a copy of some handwritten notes from the White House attributed to Dee Dee Myers. She says "John, Neil, Cliff, met to review Roger's testimony and make sure we're accurate. John P. then talked to Roger, told him that he had misspoken. Could be misleading." Do you remember talking to Roger Altman about that?

Mr. PODESTA. I described my conversation with Mr. Altman.

Senator BENNETT. Is that the conversation she's referring to?

Mr. PODESTA. Yes. I think she's referring to my conversation on March 1st between myself and Mr. Altman.

Senator BENNETT. Did you tell him what you thought could be misleading?

Mr. PODESTA. I have—go back at it one more time. I think the thing we thought was misleading—could be misleading—I don't know that I used that word with Dee Dee and I don't think I used it with Mr. Altman, but I'll describe the conversation. I had a conversation about the fall meetings. I think the answers, not to my knowledge, could be fairly viewed by this Committee as misleading, and we wanted to correct it.

Senator BENNETT. And of course, "misleading" is a very serious verb. You say you don't think you used it with her but it showed up in her notes.

Mr. PODESTA. I'm just saying I have no recollection of using that with Ms. Myers. There were six people in the meeting, so someone else could have conceivably characterized it that way.

Senator BENNETT. We may return to that. Let me go to—just a moment. Well, I'll perhaps return to that on another round. Did any of you watch this thing until we closed last night?

Mr. STEPHANOPOULOS. No, sir.

Senator BENNETT. So you missed the Chairman's closing speech. I'd like to refer to the Chairman's closing speech because it goes to an issue that you were discussing with Senator Gramm. Senator Gramm sometimes puts things in very colorful language and he talked about this being like the St. Valentine's Day Massacre and nobody can remember a shot being fired.

But the key point that the Chairman emphasized last night is that it happened. That is, that Roger Altman went into the White House, determined to recuse himself, having been instructed—not instructed, having been advised to recuse himself by the General Counsel of his Department, having talked with the Secretary of his Department, his boss who himself now cannot remember the advice, but others testified that Secretary Bentsen advised him to recuse himself. And Secretary Bentsen said he can't contradict that, he just doesn't recall, went into the White House with that kind of background, came out of the White House saying that he would consider it, and in less than 24 hours went back to the White House with a formal meeting, called at his request so he can report to senior officials of the White House that he has changed his mind. Something happened. Maybe no one can remember, but something happened.

Now, we do have some contemporaneous notes made. Repeat the one we've heard here today over and over again. Joshua Steiner may not have been in the meeting, but he was one of the few people that wrote something down about it contemporaneous to the event. It may be hearsay, it may be secondhand, but it's the only contemporaneous account we have and he says once again the White House staff told Roger Altman that it was unacceptable. They reacted very negatively to the recusal and Altman backed down the next day and agreed to a "de facto recusal" where the RTC wouldn't handle this case.

We have other testimony of someone who was there who can remember or at least claims to remember, and this is Ms. Hanson, and she says "I recall Mr. Nussbaum asking Mr. Altman why he had to do this, and I recall Mr. Altman stating that I had"—"I," Jean Hanson, General Counsel of the Treasury, "had recommended that he recuse himself, and I stated that Secretary Bentsen had agreed with the recommendation."

And she goes on, Mr. Ickes, I'd like a quick yes or no on this one. "I recall Mr. Ickes saying if Mr. Altman were going to recuse himself, he thought he should do it"—"he," Mr. Altman—"should do it sooner rather than having to do it later." Do you recall having told him that, yes or no?

Mr. ICKES. I don't have a specific recollection. I may well have.

Senator BENNETT. Thank you. I recall Mr. Nussbaum saying he thought if Mr. Altman did not recuse himself it would impose discipline on the process to obtain a fairer result, and we talked about

that with Mr. Altman and in my view, his answers were not completely forthcoming. What was the tenor of the meeting, Ms. Hanson was asked. She said—and I'm skipping through here, but not doing violence to the substance, Mr. Nussbaum was excited. When you say he was excited, how did he display it? He had a raised voice and he was excited? Mr. Ickes, were you there—you were there. Can you answer yes or no, in your opinion, was Mr. Nussbaum excited?

Mr. ICKES. Mr. Nussbaum expresses himself very articulately. Often some people take it for excitement. I've seen Bernie Nussbaum get excited over what he orders from a menu. [Laughter.]

Senator BENNETT. I take it that's a yes.

Mr. ICKES. I don't consider it—he was not out of character. He was not excited beyond what his normal demeanor in my view.

Senator BENNETT. So his normal demeanor is to be excited?

Mr. ICKES. Bernie is a very expressive person.

Senator BENNETT. Mr. Stephanopoulos is nodding. I'll take that to be a yes. [Laughter.]

Mr. ICKES. Well, I don't want to——

Senator BENNETT. "The following morning Mr. Altman called me and he said he had spoken with Mr. McLarty the prior evening. Mr. McLarty didn't attend the meeting. He also said he had a couple of other calls"—and we've not been able to find out from whom those came—"and that he decided he would not recuse himself for the time being. He said that he didn't believe that it made any difference to the outcome, but that it made them happy." And I focus on the "made them happy," and she confirmed that the "them" was the White House.

Then we come back to the diary following this event. He changes his mind and recuses himself. The diary says "we spent a tortured day trying to decide if he should recuse himself. I spoke with Podesta to let him know of our deliberations. Very frustrating that he was the chosen point of contact since he clearly was not in the complete confidence of George and Harold. After Howell Rains from The New York Times called to say that they were going to write a brutal editorial, Roger Altman decided to recuse himself. Harold and George then called to say that Bill Clinton was furious."

We asked Mr. Altman specifically if that were true, and he said well, it was his understanding that President Clinton was furious about the way in which he announced his recusal and not that he was furious about the fact that he had decided to recuse himself.

Last night, President Clinton was asked if he was furious and he said, according to The New York Times, "the only thing that upset me was that I did not want to see him stampeded into it." So we have a different version as to what upset President Clinton.

Now, Mr. Stephanopoulos, you were perhaps as close to President Clinton as anybody. Can you tell us from your point of view, A, was the President furious and, B, why, if in fact he was. He used the word last night that he was upset. Now, maybe by the time the President's being upset filters through whoever called Mr. Altman and filters through Altman to Steiner and gets to Steiner's diary, it becomes furious and I can live with the fact that there is, perhaps, a little bit of hyperbole here, but let's focus on those two

questions. A, was the President upset, furious, whatever; and B, why, because we have several different versions on the second one?

The CHAIRMAN. Mr. Stephanopoulos, let me have you go ahead and answer it. The time is up so we'll have to shift at that point, but give a complete answer.

Mr. STEPHANOPOULOS. Sir, if he was upset, he didn't demonstrate it to me that day in any way. As I have testified to this Committee, as I said in my deposition, I didn't discuss this with the President until the end of that day. As I normally do, this was a Friday afternoon, I saw him for perhaps 30 seconds, at the close of business Friday and simply reported to him on different matters that happened that day. One part of that report included a brief discussion about how Roger Altman had talked to The New York Times and had decided to recuse himself.

And my recollection of the President's response was simply a resigned shrug. It was the end of a long week. It was a very long day, working on many other matters for the President, and that's my only recollection. How that characterization got in the diary, I simply can't say because I didn't discuss anything with the President until the end of the day.

Senator BENNETT. Not to prolong it, you don't know why the President said last night that he was upset if he didn't show you that he was upset?

Mr. STEPHANOPOULOS. All I can say is that that day he simply didn't demonstrate it to me at all and I'm sure he may have had other discussions or other feelings that he might have conveyed to other people, but that was my conversation with the President.

Senator BENNETT. Thank you.

The CHAIRMAN. Senator Boxer.

Senator BOXER. Thank you.

I'm trying to get to the bottom of this whole issue of intense pressure, the words used by Mr. Steiner in his diary to describe the pressure that was supposedly put on Mr. Altman to recuse himself. And so I think the best way I can do it is ask the people who were at the meeting. Now what we know is that Mr. Steiner writes that there was intense pressure and he's supposedly quoting Mr. Altman. Mr. McLarty, the Chief of Staff at the time, did in fact discuss the issue of recusal with Mr. Altman, and he said to Mr. Altman it's up to you. I do not define that as intense pressure. Mr. Ickes, I want you to think as best you can to this whole notion of intense pressure. I'm trying to put it together from you and others who were there. I would define it as he was grumpy about it, he was a little agitated, maybe he was agitated, and he asked a series of questions about why this would be the course that Mr. Altman should follow.

Now, I would ask you, if you said if you're going to do it, do it sooner than later. Let's stipulate that that's what you said. If that's what you said, do you consider that intense pressure?

Mr. ICKES. No, I do not. As I say, I may well have said it. I don't recall it, as I sit here today, but I don't recall—I would not characterize that as intense pressure, Senator Boxer, and again as I said before to this Committee and in prior situations involved in these hearings, my view was I did not necessarily see a legal or ethical basis for him to recuse himself, especially since he had said that

he was going to follow staff recommendation, but I emphasized, as did others, that it was entirely up to him whether he was going to recuse.

Senator BOXER. All right. Now, I want to tell you why this is so important because the picture that is being painted over here about this White House is that the wagon circled around this man, made him sweat. He thought a lot about this, he came in ready to recuse himself although he said he did not state that, and no one that I know of said that he stated he planned to recuse himself. And then he was struck with guilt, collapsed sometime during the night, got up the next morning, made a call to either you or Maggie Williams—that's not clear at this time—asked that a meeting be set up.

And what we know now about that so-called meeting is that people were standing around in, I think Maggie Williams office; is that correct, Mr. Ickes, as you remember it?

Mr. ICKES. I think there are different recollections as to when that meeting took place. I recall having a very brief conversation with Mr. Altman—and I think Ms. Williams was present. I don't recall anyone else being present—in which Mr. Altman informed the two of us, assuming Ms. Williams was there and I think she was, that he had decided not to recuse himself. It was a very short, it was less than a minute, Senator Boxer, as far as I recall.

Senator BOXER. I must talk about this meeting because we're trying to piece this together.

Mr. ICKES. I understand.

Senator BOXER. And I appreciate your helping us do it. You remember the meeting to be a minute, someone else said 10 and someone else said 30 seconds. Do you remember—this is important. If you have a picture in your mind whether people were sitting down at that meeting, were people standing, do you have a recollection of that?

Mr. ICKES. My recollection, Senator Boxer, and I could be wrong on this, but my best recollection is that that meeting, so-called meeting, the three of us were standing up. I recall it being in or very near Ms. Williams' West Wing office on the second floor. I recall only the three of us there, at least in that conversation. And as I said, the three of us were standing and Mr. Altman told us that he, in a very matter of fact way, he decided that he was not going to recuse himself.

Senator BOXER. OK. So Mr. Altman did not, to the best of your memory, say I've got great news for you, Harold, and I want you to request and tell the President. I have wonderful news for you, Maggie, I am not recusing myself.

Mr. ICKES. I have no recollection of that whatsoever.

Senator BOXER. He didn't bring a bottle of champagne and say let's go out and celebrate, I'm staying on the case?

Mr. ICKES. No, he did not. It was a very matter of fact, I would say less than a minute conversation and there was no follow-up conversation about it that I recall whatsoever.

Senator BOXER. How did you respond to him at that time when he made that—

Mr. ICKES. I'm not even sure I responded. I don't recall making any response because I don't think a response was warranted. It

was up to him, he made a decision, he came and informed us. As far as I was concerned, that was it.

Senator BOXER. All right. I want to ask you, Mr. Stephanopoulos and Mr. Ickes, about the call regarding Jay Stephens. And let me start by noting, Mr. Stephanopoulos, that according to an article that appeared in The Post on April 2, 1994, no less than Marlin Fitzwater, Press Secretary to former President Bush, a leading Republican in the country, defended your telephone manner. Mr. Fitzwater said that your reaction to the hiring of Mr. Stephens was "pretty normal." Fitzwater went on:

I have to admit that if you stand in George Stephanopoulos' shoes, it would be a little difficult not to be surprised and outraged by that appointment.

The same article quotes Congressman Jim Leach, the Iowa Republican who is leading the Whitewater charge over on the other side. He characterizes your call as "pretty natural."

Now, on these calls, did the President direct either of you to make those calls or contacts? I'd ask each of you that question.

Mr. STEPHANOPOULOS. Absolutely not.

Senator BOXER. Mr. Ickes?

Mr. ICKES. No.

Senator BOXER. To your knowledge, did the President have prior knowledge of your contacts?

Mr. STEPHANOPOULOS. No.

Mr. ICKES. No.

Senator BOXER. The Independent Counsel stated "the evidence is insufficient to establish that anyone within the White House or the Department of Treasury acted with the intent to corruptly influence an RTC investigation."

Do you have knowledge or information that would contradict that conclusion, Mr. Lindsey?

Mr. LINDSEY. No, ma'am.

Senator BOXER. Mr. Podesta?

Mr. PODESTA. No.

Senator BOXER. Mr. Stephanopoulos?

Mr. STEPHANOPOULOS. No.

Senator BOXER. Mr. Ickes?

Mr. ICKES. No.

Senator BOXER. Well, I don't have any further questions, Mr. Chairman. I just feel that the holy book of these hearings from some of my colleagues' point of view is this Josh Steiner diary, and I worry a lot about that.

That young man was not at that meeting, and so if we are going to use hearsay for some people to make a case that this White House exerted terrible pressure on Mr. Altman, I think it's important that we continue to get to the bottom of it. And from what I know from you Mr. Ickes, from Maggie Williams today and I'm going to ask Mr. Nussbaum, I think there were questions raised about this recusal issue and I'm sure it might have been something that was uncomfortable, but I do not see intense pressure being exerted. And I want to ask you this last time, would you say that intense pressure was in fact applied to Mr. Altman on the recusal issue by anyone in the White House?

Mr. ICKES. In my view, no pressure was applied and Mr. Altman is a very sophisticated person who has served in Washington before. He, in my view, is not a person you push around.

Senator BOXER. Thank you.

The CHAIRMAN. Thank you, Senator Boxer.

We are now coming down the home stretch on a vote on the Senate Floor. I'm going to, in a moment, put the Committee into recess and give the witnesses a chance to refresh themselves. I've said to Senator Kerry, who left early to vote, that when he comes back that he will start and resume the hearing and that we'll rotate at that point to the next Republican.

Senator SARBANES. Could we just clarify one thing?

The CHAIRMAN. Of course.

Senator SARBANES. When Mr. Bennett was questioning Mr. Ickes about Nussbaum's excitable disposition, and Mr. Ickes said well, his disposition is generally excitable, and therefore I think was making the point that he was not excited beyond that and then Mr. Stephanopoulos nodded and Mr. Bennett said well, I take that to mean a yes.

The question is whether the nod was a yes to the question as to whether Nussbaum was excited or the nod was a yes to the Ickes observation that Nussbaum's general disposition is an excitable one.

Mr. STEPHANOPOULOS. I think it was a nod to the Ickes observation, sir.

Senator SARBANES. It was a nod to the Ickes observation.

Mr. STEPHANOPOULOS. Yes, sir.

Senator SARBANES. So you were in effect—

Mr. STEPHANOPOULOS. I was not at the meeting, I couldn't respond to that.

Mr. ICKES. But Senator Sarbanes, I wanted to go back in and clarify Senator Bennett's—when he said he took that as a yes, I was a little disconcerted by that and what I'd said before and what I say now is that Mr. Nussbaum's demeanor was his regular run of the mill, everyday demeanor. It was not anything in excess of what one who has worked with Mr. Nussbaum knows him to be. He's a very—

Senator SARBANES. That's how I understood your answer. And you were making the point that his usual demeanor is what other people would regard as excitable.

Mr. ICKES. I think compared to myself or Mr. Stephanopoulos, he works at a higher level.

Senator SARBANES. We're certainly guaranteeing that when he appears before us, he'll be quite excitable.

The CHAIRMAN. He'll have to be now. When he comes in this afternoon, if he's not excitable, then he's got a problem.

Senator SARBANES. I was concerned because Mr. Bennett took a nodding by Mr. Stephanopoulos and he says well, I take that to be a yes and the question was what was Mr. Stephanopoulos nodding yes to. Your observation that Nussbaum's usual demeanor is an excitable one or Mr. Bennett's question that Nussbaum was excited in the sense beyond the ordinary I take it.

Mr. STEPHANOPOULOS. I was nodding to Mr. Ickes.

Mr. ICKES. He was not beyond the ordinary, Senator.



The CHAIRMAN. But if he's perpetually excited how would we know when he was beyond the norm? What would he do then? Does he break furniture, or what happens? Anyway you can answer that later.

The Committee stands in recess for the duration of the vote.

[Recess.]

Senator KERRY. The hearing will come to order, please.

Senator Riegle has asked me just to keep the process moving so that we can hopefully make what is potentially a long evening less long and proceed. I believe we're going to shift now to the Republican side.

Senator ROTH.

Senator ROTH. Mr. Stephanopoulos, I have raised with several previous witnesses some questions about an internal White House ethics rule contained in a February 22 memo from Bernard Nussbaum. Are you familiar with that memorandum?

Mr. STEPHANOPOULOS. Which is that, February 22, 1993, sir?

Senator ROTH. Yes.

Mr. STEPHANOPOULOS. Yes, sir.

Senator ROTH. As you know, that memorandum prohibits White House staff from contacting investigative agencies about specific pending cases without first consulting the White House Counsel's Office. You are familiar with that?

Mr. STEPHANOPOULOS. Yes, sir.

Senator ROTH. Now on February 25, 1994, you called Josh Steiner and Steiner testified that you wanted to know how Stephens was hired and you suggested that conflict of interest should disqualify Stephens from working on Madison; is that correct?

Mr. STEPHANOPOULOS. Actually sir, I'm not certain that I called him. I know we had a conversation that day. I'm not sure who called who but we certainly had the conversation.

Senator ROTH. You certainly had that conversation?

Mr. STEPHANOPOULOS. Yes.

Senator ROTH. And Mr. Altman and Mr. Steiner both testified in their depositions that later that same day you and Mr. Ickes called Mr. Altman to tell him that the President was upset about the manner of his recusal and to convey your displeasure about the hiring of Jay Stevens in the Madison Guaranty case; is that correct?

Mr. STEPHANOPOULOS. Again, that's not how I would characterize the conversation, but Mr. Ickes and I did speak with Mr. Altman later that afternoon, yes, sir.

Senator ROTH. Now, did you consult with the White House Counsel's Office before making these contacts?

Mr. STEPHANOPOULOS. No, sir, I did not.

Senator ROTH. Do you agree that these phone calls about a specific pending investigation violated the Nussbaum memorandum or guidelines?

Mr. STEPHANOPOULOS. Sir, in the heat of the moment I neglected to contact the Counsel before asking for this information, so I guess that was an oversight, yes, sir.

Senator ROTH. I would just point out that the Nussbaum memorandum does go on to state, and I quote, "there is generally no justification for any White House involvement in particular adjudicative or rulemaking proceedings," and investigative proceedings are

covered as well. Then it points out that, regarding pending criminal and civil matters, the memorandum states "it undermines the administration of justice if the White House even appears to be interfering in such cases."

Do you agree with that statement?

Mr. STEPHANOPOULOS. I certainly follow the memo and I agree with the memo, sir. I do believe, sir, and maybe I'm mistaken, but I do believe in the memo there are certain defined exceptions for getting information or especially for dealing with press matters. Still it is wise and it is—we are supposed to talk with the Counsel first, but I believe there is some exemption for information and press matters. If I'm mistaken, I stand to be corrected.

Senator ROTH. Insofar as I am aware, there are no exceptions for press purposes. The memorandum, as a matter of fact, is quite sweeping in its language, and says specifically that in cases involving investigative, adjudicative or regulatory matters that the Office of White House Counsel should be or must be contacted.

Mr. STEPHANOPOULOS. I agree with that, sir, and it certainly was an oversight on my part not to contact the Counsel's Office.

Senator ROTH. Was any effort made with this memorandum, to make sure that all White House personnel were familiar with the memorandum and its requirements?

Mr. STEPHANOPOULOS. It had been circulated.

Senator ROTH. It had been circulated. Was any effort given to actually educate people as to what the memorandum required?

Mr. STEPHANOPOULOS. I believe at the time it probably was, sir. As I said, this was a year later. There's no excuse, I grant you. It was an oversight on my part not to contact the Counsel and that was a mistake.

Senator ROTH. Mr. Ickes, do you recall that you and Mr. Stephanopoulos had this phone conversation with Mr. Altman?

Mr. ICKES. Yes.

Senator ROTH. And are or were you familiar with Mr. Nussbaum's memorandum prohibiting such contact?

Mr. ICKES. I'm generally familiar, yes.

Senator ROTH. What do you mean by "generally"?

Mr. ICKES. Well, I couldn't give you word by word, Senator, but I have read the memorandum, and I'm familiar with the thrust of the memorandum.

Senator ROTH. Did you seek approval from the White House Counsel?

Mr. ICKES. No, I did not. I associate myself with Mr. Stephanopoulos' remarks in that regard but I would also point out that the purpose of that, of the phone call that we made was to verify whether or not Mr. Altman had in fact recused himself. We were taking press calls on that, and felt that we really needed to know so we could respond accurately and quickly to the press, but again I associate myself with Mr. Stephanopoulos' remarks. We should have contacted the Counsel's Office.

Senator ROTH. One of the conversations at least, Mr. Stephanopoulos, was to determine how Mr. Stephens was hired and that was, I believe, not public information at that time.

Mr. STEPHANOPOULOS. I'm not certain that's true, sir. It certainly is information that would be provided to the public. I assume it was done by an open and independent board.

Senator ROTH. Let me ask you, Mr. Ickes, do you agree that that telephone conversation was in conflict with the requirements of the ethics memorandum?

Mr. ICKES. I think in hindsight, Senator, there is no question that we should have, Mr. Stephanopoulos and I should have contacted Counsel's Office, but again I want to be within the, I think, both the letter and the spirit of the memorandum. But again I want to emphasize that the purpose of the phone call was to verify whether or not he'd recused himself so that we could respond accurately and quickly to the press in that regard.

Senator ROTH. Again, let me ask you, was there any effort made to educate White House staff members about the requirements of this memorandum?

Mr. ICKES. I didn't join the White House staff Senator until January. I don't know when that memorandum was circulated. I know that when I came to the White House staff, a copy of it was given to me. I don't know what steps in general were taken.

Senator ROTH. A copy was given you when you were first employed?

Mr. ICKES. Yes.

Mr. STEPHANOPOULOS. Sir, if I may. I don't have the Nussbaum memorandum in front of me, but I would just like to clarify. I'm not certain that this was an investigative or an adjudicative matter that required the clearance. I would say in the future it would also always be prudent to get that clearance and clearly in hindsight, it would have helped to have talked to the Counsel first. But I do believe seeking this information was entirely proper.

Remember, this was a discussion that began with discussing what Mr. Altman was saying to the press about the recusal. It was not dealing specifically with the investigative or the adjudicative system. And second, it was a question about how Jay Stephens came to be hired. Again I'm not certain, I do not have the memorandum in front of me. I can say, as I said to you earlier, that clearly talking to the Counsel first would be prudent and would be smart. And it would probably have been better had we done it, but I'm not certain, if you are talking about the letter of the guidelines, how that falls. But that's simply a point that can be clarified by looking at them.

Senator KERRY. Senator Roth, let me say that we're already over by a minute or so. I don't want to cut you off, like the Chairman did, but I just want—

Senator ROTH. I want to point out that I think the memorandum is very clear and there are no exceptions to its requirements and of course it was written for non-lawyers, so I do not think it is particularly technical. So I agree with you that this is in conflict with the requirements of the Nussbaum memorandum.

Thank you, Mr. Chairman.

Senator KERRY. Senator Campbell.

Senator CAMPBELL. Thank you, Mr. Chairman.

Mr. Lindsey, it's my understanding you said you told President Clinton about the press inquiries on the Madison referrals; is that correct?

Mr. LINDSEY. Yes, sir.

Senator CAMPBELL. That was after the call on October 4th from Jim Lyons in Denver.

Mr. LINDSEY. That's correct.

Senator CAMPBELL. Did the President have any reaction, or did he instruct you to take any action or not to take any action or to do anything?

Mr. LINDSEY. No, he did not instruct me to do anything, didn't ask me to do anything, didn't suggest I do anything. And I didn't do anything.

Senator CAMPBELL. Also, you testified at one point that when Roger Altman came to the White House to say that he had decided not to recuse himself, some people congratulated him. We've had different, conflicting testimony about the reaction to his decision to recuse himself. As a Senior Adviser to the President, did you feel any responsibility to encourage him to do so or to not do so?

Mr. LINDSEY. Well, first of all, I don't think that's my testimony. I was not in the meeting when Roger came to the White House, so I have no idea what happened.

Senator CAMPBELL. My notes may be in error, thanks, I appreciate that.

Mr. Stephanopoulos, Mr. Steiner describes in his diary rather descriptively and vividly your phone call with him. You don't remember it that way and didn't recollect saying anything like we should get rid of him, talking about Mr. Stephens. But you have said that you were blowing off steam. Do you remember any specific things you did say in that conversation dealing with Mr. Stephens?

Mr. STEPHANOPOULOS. It was a very brief conversation, sir, but what I do remember as, I said earlier, was I know that I asked how Jay Stephens came to be hired and I was very angry about it. And I mean, since I'm under oath I can admit I'm still angry about it. I'm mystified at how Jay Stephens, who is such a public opponent of the President, a man who had accused the President of obstruction of Justice, a man who along with 93 other U.S. Attorneys had his resignation asked for and instead of accepting it like all the other 93 U.S. Attorneys, went on a public attack against the President. A man who is using fundraising letters, the lure of disclosing Grand Jury testimony in fundraising letters. A man who had been accused of disclosing Grand Jury testimony in public.

I thought that that was just unfair to the President.

I couldn't understand how he could have been hired by an impartial board to prosecute this case. And I was very angry about it, I'm still angry about it.

Senator CAMPBELL. Well, I believe as Senator Bryan does, that's certainly understandable. Did the President and the First Lady have any concerns—

Mr. STEPHANOPOULOS. I didn't discuss this with them.

Senator CAMPBELL. They never asked you to call the Treasury Department about him or asked you to put any pressure on anyone—

Mr. STEPHANOPOULOS. No, sir, they did not.

Senator CAMPBELL [continuing]. To remove him from the Madison investigation; correct?

Mr. STEPHANOPOULOS. No, sir.

Senator CAMPBELL. Mr. Podesta, I know what a Secretary does. I know what an Assistant Secretary does. And I know what an Under Secretary does. But I'm not quite sure what a Staff Secretary does. Would you tell me what is your role at the White House, please? I mean, I read part of your job description, it says something about controlling the paper flow to the President.

Mr. PODESTA. That's pretty accurate, Senator. I think that in many agencies, the role is described as the Executive Secretary. Any paper, memoranda, et cetera, that are coming into the President are forwarded through my office. I coordinate senior staff response to that and forward it to the President and take care of it when it comes back out from him.

Senator CAMPBELL. Well, how did you get stuck with making a call to Mr. Altman? Is that also part of the job description, the mail and the calls, too?

Mr. PODESTA. I ask myself that question quite often, Senator. I think that in the context of the—my assignment from Mr. McLarty, as I said which was limited, but I had the assignment of watching this hearing and then in the wake of the meeting we held in my office and perhaps in—particularly, I'm having a little trouble with the mike and seeing you also. Perhaps particularly because one of the issues was of such personal concern to Mr. Nussbaum which is how the meeting was set up, I think it just—I drew the straw and as I said, I was there not only with Mr. Lindsey but with four members of the White House Counsel staff, but we agreed that I would be tasked to do it and I did it.

Senator CAMPBELL. "We agreed," meaning who?

Mr. PODESTA. Mr. Nussbaum, Mr. Klein, Mr. Eggleston, Mr. Sloan, Mr. Lindsey and myself.

Senator CAMPBELL. We also heard a lot about the discussions among the White House staff about correcting Mr. Altman's February 2nd testimony. Did anyone argue for not correcting them or postponing correcting them or anything of that nature?

Mr. PODESTA. The February 24th testimony?

Senator CAMPBELL. Yes.

Mr. PODESTA. Quite the contrary. I think it was a strong concern that the testimony be corrected and be corrected promptly.

Senator CAMPBELL. Thank you, Mr. Chairman. I will yield the rest of my time.

The CHAIRMAN. Thank you, Senator Campbell.

Senator Faircloth.

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Mr. Ickes, on March 1st, you forwarded a memo to Hillary Clinton regarding the Resolution Trust Corporation.

You attached a copy of a February 17th FDIC report about possible conflicts of interest regarding the Rose Law Firm, Hillary Clinton's old law firm, representing the FDIC against Madison Guaranty Savings & Loan. We were given that confidential document to prepare for this hearing. I was interested in it for several reasons, well, one was I was mentioned in it. But Mrs. Clinton worked for the Rose Law Firm before her husband was elected

President. She says there was no conflict of interest even though she represented Madison Guaranty before it was closed, then her law firm represented the FDIC against Madison Guaranty—against Madison Guaranty after it was closed.

So my question is this, why would White House staff send Hillary Clinton a memo about something that happened before she was the First Lady and about something in which they say and she says nothing is wrong?

Mr. ICKES. It's not clear, Senator, that that memorandum—

The CHAIRMAN. Mr. Ickes, before you respond and again excuse me for interrupting and I say to my friend from North Carolina, that particular memo, which was the last document to come to us, really falls into two parts. There is a part that in effect is within the scope of our inquiry and then there is a part that is not. I think it's appropriate to ask questions about the part that's within the scope of the inquiry, but I think we run into an issue of getting beyond that and so I would just say to Mr. Ickes that you should restrict your response to the part of the memo that's within the scope of this charter that we have.

Senator FAIRCLOTH. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Mr. ICKES. Mr. Chairman, I would—I'm somewhat at a disadvantage because I don't have the document in front of me. It's my understanding—

The CHAIRMAN. We're going to send it out to you and mark it out so that we're true to our mission here. And let's suspend the clock for a minute so that your time is not running while we do this and we'll just hold things in place until such time as you have a chance to do this. You better take it down and explain it. I appreciate—

Senator FAIRCLOTH. I understand.

The CHAIRMAN [continuing]. The forbearance here.

[Pause.]

And if there's any confusion, Mr. Ickes, if you're not exactly clear, ask for guidance and I'll see that you have the guidance.

So, Senator Faircloth, we'll restore that time and do you want to pose the question again or leave it as it sits and let Mr. Ickes answer within the scope of what—

Senator FAIRCLOTH. I'll leave it as it sits if he remembers it and answer within the scope that's within the bounds of what we're doing.

The CHAIRMAN. Fair enough.

Senator FAIRCLOTH. If he doesn't remember it, I'll read it again.

Mr. ICKES. Senator, just so the record is clear, I've been handed three pieces of paper. As I understand it there were many more pieces of paper involved in this document or set of documents. The first one is a memorandum to the First Lady from Harold Ickes, dated 1 March 1994. I've been informed by Counsel that the first paragraph of that two-paragraph memorandum or actually three-paragraph memorandum is redacted, that the only one that is within the scope of this hearing is the second one. And then there is I have two other pieces of paper in front of me which apparently are part of a memorandum that I gather was attached to the so-called transmittal memorandum of which only a limited amount of those two pages are within the scope.

So based on that, could I trouble you to ask your question again? I'm sorry.

Senator FAIRCLOTH. Well, my question is why would the White House staff send Hillary Clinton a memo about something that happened before she was First Lady and about which the White House and she as an individual says nothing is wrong, why would you be sending her such a memo?

Mr. ICKES. Primarily informative, Senator. This was a matter that was being discussed, if not daily certainly very frequently, in the press. Her relationship with Rose Law Firm, as you've pointed out, was well known and it was my understanding that two of the memorandum included in this discussed the relationship of the FDIC as well as the RTC to the Rose Law Firm. It was merely being sent to her as a matter of information and interest.

Senator FAIRCLOTH. But she had a pretty intense interest in what was going on here, isn't that correct?

Mr. ICKES. Certainly—she certainly in my view had an interest because it involved her name and it involved her prior law firm. I would like to say for the record however, Senator, that it is not at all clear to me that this memorandum, that is the transmittal memorandum which I described earlier was in fact sent.

I'll go into the details of why if you wish or just leave it the way it is.

Senator FAIRCLOTH. Mr. Lindsey.

Mr. LINDSEY. Yes, sir.

Senator FAIRCLOTH. I believe you said earlier that you are originally from Arkansas; is that right?

Mr. LINDSEY. Yes, sir, I am.

Senator FAIRCLOTH. Before coming to Arkansas, how long had you lived there? I mean, before coming to Washington, excuse me, how long had you lived in Arkansas?

Mr. LINDSEY. I was born and raised in Arkansas. I went to undergraduate school in Memphis. I then came to Washington as a Legislative Assistant to Senator Fulbright and to attend law school. I went back to Arkansas in 1975.

Senator FAIRCLOTH. How many years were you in Arkansas?

Mr. LINDSEY. Well, I mean, I've lived in Washington and Arkansas. I lived in Arkansas from 1975 until 1979 when I moved back to Washington. I moved back to Arkansas in 1981 and lived there until 1993 when I joined the Clinton Administration.

Senator FAIRCLOTH. How long have you known Bill Clinton?

Mr. LINDSEY. I met him in 1968.

Senator FAIRCLOTH. Mr. Lindsey, The Washington Post describes your role in the Clinton Administration in the following terms, and I quote, "Lindsey is like the plumber who fixes the faucet when the family is at work and slips the key back through the mail slot. No one saw him, but the problem is gone."

Now, I certainly believe——

Senator KERRY. Where can I find that kind of plumber?

Senator FAIRCLOTH. I believe that was intended and certainly is a favorable description of your effectiveness in the Administration. You would agree with that I hope?

Mr. LINDSEY. I'm not sure I understood what it meant when I read it.

Senator FAIRCLOTH. Do you at times handle press inquiries relating to matters in Arkansas involving President Clinton?

Mr. LINDSEY. Yes, sir.

Senator FAIRCLOTH. When was the first time you heard of the RTC investigation into Madison Guaranty?

Mr. LINDSEY. Well, I guess the first time was in 1979 [1989] when they brought lawsuit against Jim McDougal.

Senator FAIRCLOTH. Who brought the lawsuit against Mr. McDougal?

Mr. LINDSEY. The Justice Department did.

Senator FAIRCLOTH. You've been familiar with it from day 1 pretty much?

Mr. LINDSEY. Again, being from Arkansas, I was aware that Jim McDougal was tried and acquitted.

Senator FAIRCLOTH. Mr. Lindsey, are you aware of any communication between anyone at the White House and anyone at the Justice Department regarding press inquiries relating to the Resolution Trust Corporation criminal referral?

Senator DODD. Mr. Chairman, I just—on a scope, is this—

The CHAIRMAN. I'm waiting for—

Senator FAIRCLOTH. This is before the September 29th "heads-up" meeting.

The CHAIRMAN. I was waiting for Senator Faircloth to finish his question here.

Senator FAIRCLOTH. That would be—

The CHAIRMAN. I think the problem we have with that as well is when we get into the issue of Justice Department activity that's still under inquiry by Mr. Fiske, that is sort of screened off from us at this point, that that would fall into that prohibited area.

Senator FAIRCLOTH. Mr. Chairman, this was a press inquiry. I didn't ask about—regarding press inquiries relating to the RTC criminal referral before September 29th. This is not White House. This is press.

The CHAIRMAN. But did I understand you to say it was a contact of the Justice Department?

Senator FAIRCLOTH. I'll read it again.

The CHAIRMAN. Excuse me, I'm not trying to be argumentative, I'm just trying to understand.

Senator FAIRCLOTH. That's right.

Are you aware of any communication between anyone at the White House and anyone at the Justice Department regarding press inquiries relating to the RTC criminal referral before the September 29th "heads-up" meeting?

The CHAIRMAN. Here, if I may say, the problem is not the subject of a press inquiry which would appear to be innocuous. It's the issue of a contact to the Justice Department and that area is still under active review by the Special Prosecutor and that's why question in that area—

Senator DODD. Independent Counsel.

The CHAIRMAN. I meant to say Independent Counsel.

That's why that area for the time being is fenced off.

We'll get into that at a later time, but we can't at this time.

Senator FAIRCLOTH. Mr. Chairman, I'll make a trade with you, I'll withdraw the question if you'll give me my time back.



The CHAIRMAN. Yes, I will.

Senator DODD. Don't use that as a tactic all the time. [Laughter.]

Senator FAIRCLOTH. Mr. Lindsey, I believe up until January or so you headed the White House Office of Personnel; is that correct?

Mr. LINDSEY. Until November 1993, I was Director of the Office of Presidential Personnel.

Senator FAIRCLOTH. The Washington Post reported that you helped the President pick, and I quote, "legal talent."

Mr. LINDSEY. I still deal with judges, U.S. Attorneys, and Marshals.

Senator FAIRCLOTH. As you may be aware, Roger Altman testified before us Tuesday and one of the items discussed was his diary, as he has called it, or a scrapbook of historical significance. After a meeting with Maggie Williams, Hillary Clinton's Chief of Staff, on January 11th, Mr. Altman wrote that he had gotten the impression the White House was actively trying to negotiate officials at the Justice Department the scope and jurisdiction of what a Special Counsel could look into. This, of course, was prior to the appointment of the Special Counsel. The point being that after months of opposing the appointment of a Special Counsel, the Clintons were finally about to succumb to the growing political pressure and to ask the Attorney General to appoint a Special Counsel, but not until they first tried to limit what he could look into.

Mr. Fiske, did you—Mr. Lindsey rather, did you talk with Robert Fiske prior to his appointment as Special Counsel?

Mr. LINDSEY. No, sir.

Senator FAIRCLOTH. Did you talk with Bernard Nussbaum about Mr. Fiske before his appointment as Special Counsel?

Mr. LINDSEY. I don't believe so. I think I had heard that Mr. Fiske's name had been mentioned as a possible candidate, but I don't believe—

Senator FAIRCLOTH. This is an important question: Did you talk with Bernard Nussbaum about Robert Fiske prior to his appointment as Special Counsel?

Mr. LINDSEY. Again, I think I had heard that Mr. Fiske's name was one of the names being mentioned. Bernie and I may have talked about that, but we didn't talk in any detail about it, it was simply a discussion about the newspaper accounts.

Senator FAIRCLOTH. Did you talk with anyone at the Justice Department concerning jurisdiction or scope of the Special Counsel?

Mr. LINDSEY. No, sir, I did not and I do not know of anyone in the White House who did.

Senator FAIRCLOTH. Thank you.

And thank you, Mr. Chairman.

The CHAIRMAN. Senator Sarbanes, do I understand—

Senator SARBANES. I think Senator Murray has been here throughout and—

The CHAIRMAN. She's prepared to have you go next.

Senator MURRAY. I'm really used to going last.

Senator SARBANES. I'm happy to defer to you.

Senator MURRAY. OK, that's fine. I'm ready.

The CHAIRMAN. Senator Murray.

Senator MURRAY. Thank you, Mr. Chairman and thank you, Senator Sarbanes.

Welcome, gentlemen. I sit way over here, I generally go last, usually every question has been asked, but in my State we believe in conserving resources, so I don't like to rehash what we've already gone through.

If for a minute you will indulge me, I want to review what I think I know after 5 days here. It seems to me that the RTC handed down nine criminal referrals on Madison Guaranty. Apparently the President and the First Lady were named as possible witnesses so this information which was perceived by some as newsworthy was leaked from the RTC to the press. That apparently is no surprise to anybody either. Reporters started asking questions. They wanted responses and more information, and they started calling the RTC, the Department of Treasury and the White House.

So because of those press inquiries, officials from those agencies and the White House met to discuss how to deal with those press inquiries. I think I'm right so far. Now because of all of those meetings that occurred as a result of press inquiries, charges are now being made that those meetings were illegal or unethical or improper. And, as a result of that, we have piled through tons of depositions and paperwork, 5 days of hearings and a lot of questions.

Am I right in all of that?

Mr. STEPHANOPOULOS. Basically.

Senator MURRAY. Well, I do believe that it would have been better if a lot of those meetings hadn't taken place, but I also think that it's unfair that when the press knows something and, hence, the American people and Senate staff know it, there should be a process in place so that those who are affected by that information should also have it.

My question is: How do we set up a system so that contacts can be made between Government agencies so that people in Government know what everybody else knows? Maybe Mr. Stephanopoulos can address this.

Mr. STEPHANOPOULOS. Sure, I'd be happy. I think that Mr. Cutler did testify or is planning on testifying before this Committee and I think he's laid out appropriate guidelines for making sure you contact Counsel's Office on that. But I think that the basic dynamic point that is also right. There was an awful lot of information flying out of the RTC and other places that we weren't aware of but there were a number of reporters and other organizations were and that put us at something of a disadvantage but I think it should be done properly and Mr. Cutler has laid out proper guidelines.

Senator MURRAY. He does testify tomorrow, and I will be listening to his testimony, because I hope we learn some lessons from this in order to handle it right in the future. There will be times in the future for some President down the road who may have to deal with the same kind of thing and I don't think it's fair for them to be at a disadvantage.

The other question we have spent a great deal of time on here is the question of recusals and I want to get to what I think is the problem there. Mr. Stephanopoulos, do you know Ellen Kulka?

Mr. STEPHANOPOULOS. No, I do not.

Senator MURRAY. Mr. Lindsey, do you know her?

Mr. LINDSEY. No, ma'am.

Senator MURRAY. Mr. Podesta?

Mr. PODESTA. No.

Senator MURRAY. Mr. Ickes?

Mr. ICKES. No, I do not.

Senator MURRAY. Did any of you try to pressure Roger Altman not to recuse himself because you thought he would be more lenient toward the Madison case than Ellen Kulka would be?

Mr. STEPHANOPOULOS. No.

Mr. PODESTA. No.

Mr. LINDSEY. No.

Mr. ICKES. I did not and I repeat what I've said before at this hearing and elsewhere that it was my clear recollection that Mr. Altman said in the February 2nd meeting that he was basically going to follow the recommendations of the staff attorneys.

Senator MURRAY. And let me get to the final questions which I really think are the most critical questions we can ask and I want each one of you to answer this. Have you ever done anything, anything whatsoever, to impede or derail an investigation at the RTC or the Department of Justice?

Mr. PODESTA. Absolutely not.

Mr. LINDSEY. No.

Mr. STEPHANOPOULOS. No.

Mr. ICKES. No.

Senator MURRAY. Are any of you aware of anybody who is responsible for derailing or impeding a investigation into Madison?

Mr. STEPHANOPOULOS. No.

Mr. PODESTA. No.

Mr. LINDSEY. No.

Mr. ICKES. No.

Senator MURRAY. And do any of you know of anybody or have you yourself ever seen the criminal referrals?

Mr. STEPHANOPOULOS. No.

Mr. PODESTA. No.

Mr. LINDSEY. No.

Mr. ICKES. No.

Senator MURRAY. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Murray.

Senator HATCH.

Senator HATCH. Thank you, Mr. Chairman.

Mr. Stephanopoulos, let me approach this with you. Some have tried to explain the events which occurred on February 25th as a minor political gaffe, "political gaffe." However, given the testimony this Committee has heard this week——

Senator DODD. What date is that you are talking about? I'm sorry.

Senator HATCH. February 25th.

If you take the testimony that this Committee has been given this week, I believe it would be irresponsible——

Senator KERRY. I'm sorry, I didn't follow that February 24th was the testimony; right?

Senator HATCH. I'm talking about the events which occurred on February 25th.

Senator KERRY. OK.

Senator HATCH. I personally believe it would be irresponsible for the Congress to dump that position absent significant additional inquiry. In his testimony before this Committee, Mr. Altman confirmed that you wanted the RTC to try and get rid of or fire Mr. Stephens. Now that's the Altman hearing testimony. In addition we have Jean Hanson's testimony, both in her deposition and in this hearing, that Mr. Steiner told her after his discussions with you and Mr. Altman that the White House wanted to get rid of Mr. Stephens. Now, Ms. Hanson also testified that, following this conversation with you or following his conversation with you, Josh Steiner suggested that Ms. Kulka be fired and that the RTC case be given to the Independent Counsel. As well, we have Mr. Steiner's testimony in his diary, all of which indicate this is more than just a political gaffe situation. Now, as Mr. Steiner testified, you——

Mr. STEPHANOPOULOS. Senator, if I may.

Senator HATCH. Let me ask the question first. As Mr. Steiner testified, you called him after the White House learned that Altman had recused himself; right? That's when that call occurred?

Mr. STEPHANOPOULOS. Again, I would say, first of all, that I'm not sure who called who, whether he called me to inform me but we had a conversation.

Senator HATCH. That conversation occurred after Mr. Altman——

Mr. STEPHANOPOULOS. After Mr. Altman had had a conversation with The New York Times.

Senator HATCH. And said he would recuse himself.

Mr. STEPHANOPOULOS. Yes.

Senator HATCH. Mr. Ickes—as Mr. Ickes testified in his deposition, when you learned of Mr. Altman's recusal on the 25th you expressed surprise. Now, that's true, isn't it?

Mr. STEPHANOPOULOS. Oh, certainly, sir. I was surprised by the manner in which he recused himself, yes.

Senator HATCH. I understand. Mr. Steiner testified that your telephone conversation occurred first, prior to the call with Mr. Altman. Indeed you testified that your phone call with Mr. Steiner was prior to the Altman/Ickes conference and I think you affirm this in your opening statement.

Mr. STEPHANOPOULOS. I believe that's true, sir, yeah.

Senator HATCH. OK. Mr. Steiner also testified that after his call from you, he was present in Mr. Altman's office later in the day, in that particular day and that you and Mr. Ickes called Mr. Altman. It's correct that you and Mr. Ickes called Mr. Altman later in that day?

Mr. STEPHANOPOULOS. Yes, sir, it is.

Senator HATCH. OK. I just want to get these facts straight because I think some of them are hard to follow. Returning to the first call, the one either from Mr. Steiner to you or from you to Mr. Steiner, Mr. Steiner has testified clearly that your voice was raised in that but you've kind of indicated——

Mr. STEPHANOPOULOS. Oh, I grant that, sir.

Senator HATCH. OK. Mr. Steiner's testimony, in his deposition, Mr. Steiner testified that you called him but you're not sure of that.

Mr. STEPHANOPOULOS. I'm not certain.

Senator HATCH. It could have been that?

Mr. STEPHANOPOULOS. It could have been either way, I just don't know.

Senator HATCH. In your deposition, you testified that the reason you asked about Mr. Stephens' hiring was that you were "anticipating questions from the press."

Mr. STEPHANOPOULOS. Certainly, sir, I was expecting given such a surprising choice I would expect that Anne Devereaux of The Washington Post or Doug Joel of The New York Times would ask.

Senator HATCH. I understand. You admitted in your deposition that at the time of your phone call with Mr. Steiner there had been no press inquiries to you concerning the hiring of Mr. Stephens; that's right, isn't it?

Mr. STEPHANOPOULOS. Part of my job, sir, is to anticipate press inquiries and I believe that it was fair to say there would be one.

Senator HATCH. Right, but up to that point there had been no press inquiries?

Mr. STEPHANOPOULOS. No, but certainly part of my job is to anticipate them.

Senator HATCH. I understand. Ellen Kulka testified earlier this week that Stephens had been hired nearly one month earlier.

Mr. STEPHANOPOULOS. I don't know when he was hired.

Senator HATCH. You hadn't had any press inquiries up to that point, though, is my point.

Mr. STEPHANOPOULOS. Not up to that point.

Senator HATCH. During your deposition, you were asked whether you'd contacted the White House press office following your call with Mr. Steiner in order to alert them of these "anticipated press calls" and you admitted that you had not; right?

Mr. STEPHANOPOULOS. Not immediately but I wouldn't necessarily do it immediately. I run into them several times during the day.

Senator HATCH. Right, I understand. From Mr. Steiner's testimony, it really doesn't appear that you were very concerned about the press calls.

Mr. STEPHANOPOULOS. Oh, no, I was concerned in finding out the information of how he had come to be hired, anticipating the calls. I'm not suggesting, sir, that my anger was about the press calls. My anger was real and it was about the fact that he was chosen. Those are two separate matters. What I needed to know was the information anticipating the press calls and that's what I got from Mr. Steiner and that ended the phone conversation.

Senator HATCH. I think you made that position clear before. According to Mr. Steiner's testimony, you asked him how Mr. Stephens had been hired; right?

Mr. STEPHANOPOULOS. Yes, sir.

Senator HATCH. Mr. Steiner testified that after he told you how Mr. Stephens had been hired, you told him that Mr. Stephens should be disqualified for conflict of interest and that you have testified that, you basically said this when you gave your deposition.

Mr. STEPHANOPOULOS. I know I believe that he has a conflict of interest, sir, yes.

Senator HATCH. That was your point, yes. As I mentioned earlier this Committee has uncovered at least three separate pieces of evidence that you urged Treasury officials to attempt to fire Mr. Stephens. The Altman testimony, the Hanson testimony and the Steiner——

Mr. STEPHANOPOULOS. Sir, that's where I have a question, sir. I have not seen the Altman testimony and I'm not certain that in the testimony of Ms. Hanson it was clear when she talked to Mr. Steiner or whether he confirmed that at all. I'm not familiar with the Altman testimony. I would point out, sir, that this was looked at by the Special Counsel, Mr. Fiske, and he found no criminal conduct. The Office of Government Ethics found no ethical misconduct.

Senator HATCH. That's not my point. My point is that we feel we've uncovered three different pieces of evidence from the three of them that you wanted Mr. Stephens fired. Now, Mr. Stephanopoulos, let me just——

Senator KERRY. They're not technically different, Senator. They're built on each other.

Senator HATCH. I understand.

Senator KERRY. Don't just dismiss that. They're not three separate pieces so let's have the record be clear.

Senator HATCH. Well, let's look at them then later when you have time. I think they're pretty clear.

I would like you to read from page 2 of the Steiner diary transcript where it begins "after Howell Rains."

Mr. STEPHANOPOULOS. Sir, it's not my diary.

Senator HATCH. It's not your diary, but I'd like you to read it. "After Howell Rains" and just read down through the sentence which ends with "stupid and improper" because this is what he says.

Mr. STEPHANOPOULOS. It is not my diary. I'm not going to read it.

Senator HATCH. I just want to see if we can refresh your recollection with this. If you can't say you don't——

Mr. STEPHANOPOULOS. I'm looking at it, I've heard it several times. I'm not going to read it.

The CHAIRMAN. Senator Hatch, I don't know that he should be expected to read somebody else's diary. I think he can read it off a piece of paper to himself or you can state it to him.

Senator HATCH. Let me just read it. "After Howell Rains from The New York Times called to say that they were going to write a brutal editorial, RA decided to recuse himself. Harold and George then called to say that BC was furious. They also asked how Jay Stephens, the former USA, had been hired to be outside counseling in this case. Simply outrageous that RTC had hired him. But even more amazing when George then suggested to me that we needed to find a way to get rid of him. Persuaded George that firing him would be incredibly stupid and improper."

Now, let me just ask you that, during your deposition when you were asked about whether you told Mr. Steiner to get rid of or fire Mr. Stephens, you told the Committee "I just don't remember."

Mr. STEPHANOPOULOS. As I repeated today, sir, yes.

Senator HATCH. Given the testimony this week and after you've had an opportunity to read that, and that's why I wanted you to

read it. I wasn't trying to embarrass you, I just wanted you to read the darned thing.

Mr. STEPHANOPOULOS. It's no embarrassment, sir.

Senator HATCH. OK. Let me ask you the question again. Did you ask the—did you ask Mr. Steiner whether the RTC or anyone else could fire or get rid of Mr. Stephens?

Mr. STEPHANOPOULOS. I don't remember saying that at all, sir.

Senator HATCH. Is it possible you did?

Mr. STEPHANOPOULOS. Again, that is not my memory of the conversation.

Senator HATCH. So as far as you're concerned—

Mr. STEPHANOPOULOS. That's not the testimony I gave to this Committee.

Senator HATCH. As far as you're concerned, you didn't say it, then?

Mr. STEPHANOPOULOS. As far as I'm concerned, I have no memory of it and I gave you my testimony about the conversation. I would also point out that Mr. Stephens is still, of course, clearly investigating this case.

Senator HATCH. Do I take that as a "no" or is it a "maybe" or is it "I just don't remember."

Mr. STEPHANOPOULOS. This was a very short conversation, sir, in the middle of a very busy day. Like a lot of your staffers, I have to go from a lot of issues to the other. I was at work at 6:00 that morning, dealing with questions on the Hebron massacre, and working all day long. I don't remember an awful lot about that conversation, as I testified. I don't remember saying anything like that.

Senator HATCH. But you're not denying that it might have happened?

Mr. STEPHANOPOULOS. I simply don't remember saying anything like that at all, sir.

The CHAIRMAN. Senator Hatch, I've let that go on so that we could bring it to a conclusion, but if you need additional time later, we'll come back for that purpose.

Mr. LINDSEY. Mr. Chairman, I was just handed a note that said that I testified in response to Senator Faircloth that the Justice Department lawsuit against Jim McDougal was in 1979. I would like to correct the record and say that it was 1989.

The CHAIRMAN. All right, so corrected. Let me also, while there's been an interruption, indicate with respect earlier to the conversation with Senator Faircloth and his questions about this memorandum that he was referring to, this is the memorandum of 1 March 1994 by Mr. Harold Ickes, the White House has released that entire memorandum publicly so that's out in the public domain. With respect to our charter here, in terms of our official records, we're only going to include in our record the part of it that's within the scope of our resolution. That's the nature in which we honor our own boundaries here. That full memo has been released by the White House and it's out there for anybody's review. I just wanted to make sure that was clear.

Senator Sarbanes.

Senator SARBANES. Thank you, Mr. Chairman.

Mr. Ickes, after the meeting of February 2nd at which Altman discussed the RTC procedures, and the recusal and in which apparently—well, Maggie Williams is very clear that she, at the meeting, told him that she didn't think he should recuse himself or why was he doing that, she didn't see any need to do that. I take it that was the general sentiment of the other people in the meeting; is that correct?

Mr. ICKES. Senator, I think—I don't recall specifically what Ms. Williams said. I think there is a difference between saying that he shouldn't recuse himself as opposed to saying there was no—that she didn't see a basis for his recusing himself. Again, I don't want to characterize her testimony or what she said because I don't recall specifically. From my own—I do—my best recollection of what I said was that based on his presentation of the factor for which he thought he might recuse himself or might not, it was my feeling that there was not, that he didn't have to recuse himself, but again we left it entirely up to him. And again I want to repeat that he, it's my recollection, that during that meeting he indicated that he was going to follow the staff recommendation in any event.

Senator SARBANES. Now the next day there was a—Altman came over to the White House to tell people that he was not going to recuse himself; is that correct?

Mr. ICKES. That's my recollection, yes.

Senator SARBANES. Now he says that he called you and asked that a meeting be set up with people for him to tell them that.

Mr. ICKES. Senator, I don't recall Mr. Altman calling me on the 3rd. I do recall him calling me prior to the meeting of the 2nd to set up that meeting. He may well have called me to set up the meeting on the 3rd, I just simply don't have a recollection of it.

Senator SARBANES. Well, now, Ms. Williams says he called her. We asked Altman about that and he said he called you, but you don't recall him calling you?

Mr. ICKES. I don't, and he may well have, Senator, I'm not saying he didn't. I just don't have a recollection that he did.

Senator SARBANES. Now that meeting took place in Ms. Williams' office?

Mr. ICKES. To the best of my recollection, it took place either in her office or in the doorway. I only recall, as I've testified before, that three people participated: Myself, Maggie Williams and Roger Altman. There may have been others but that's my recollection.

Senator SARBANES. And what happened?

Mr. ICKES. As I've testified before, Senator, it was a very short meeting. I recall it being less than a minute and all I recall is that Mr. Altman informed me and I think Ms. Williams who were standing there that he had decided against recusal, and my recollection is that was the end of it.

Senator SARBANES. Did you wonder why a meeting had been called for Altman to spend—I don't know—I don't know what your estimate of the length of time is but not very much time to tell you he was not going to recuse himself?

Mr. ICKES. Senator, I think—I've watched very little of these hearings I've been very busy with the President's Health Care initiative and so I've watched very little of these hearings and have



not had the opportunity to read much. I think there is a variance between some of our testimony as to when that meeting took place.

My best recollection—I could be wrong, but my best recollection is that that so-called meeting took place very late in the afternoon, just prior to a 6:00 Health Care meeting that I typically held at least three or four times a week. And so my recollection is that Mr. Altman informed me and Ms. Williams just prior to beginning of what I call the 6:00 Health Care meeting. It was held in her office on a regular basis.

Senator SARBANES. Now, was Ms. Hanson at that meeting?

Mr. ICKES. In the meeting that I've just described, Ms. Hanson was not there. I do not recall her being present.

Senator SARBANES. Do you recall her being present immediately after that meeting?

Mr. ICKES. I don't—if I'm correct on the time, Senator, Mr. Altman was a participant in the 6:00 meeting and so it would not have been a surprise to me to see him there. Ms. Williams was a participant. I was a participant. I do recall seeing Ms. Hanson in or about Ms. Williams' office, and my best recollection is that it was around noon or shortly after noon and I think it was on that same day.

Senator SARBANES. That you saw Ms. Hanson?

Mr. ICKES. Yes.

Senator SARBANES. What she says is "I went to the White House and found Ms. Williams' office and when I arrived in her office, Mr. Altman was gone. I was told that Mr. Altman had just left. Mr. Ickes was there. Mr. Eggleston was there. Ms. Williams was there. There was some conversation." Then I want to go on and read her deposition, too. "What I remember of it is Mr. Ickes asked me who else knew that I had recommended to Mr. Altman that he recuse himself and I gave him three names, Michael Levy, Ben Nye and I don't recall the third. He said that's good because if it gets out it will look bad. I said it's what I would have done if I had been in his position and Mr. Ickes said it would but it would be better if it didn't get out."

Now, what did you mean by all of that?

Mr. ICKES. Senator, I don't think I said that and I simply have absolutely no recollection of saying that. My recollection of my encounter with Ms. Hanson that day was that I was in Maggie Williams' office. I often was and I ran into Ms. Hanson who, my understanding is, that she'd come over to see Ms. Williams and my only recollection of that encounter, which was again extraordinarily short, was hello, nice to see you and good-bye. I was on my way downstairs or somewhere else. That's all I recall of that meeting. I do not recall saying to her what she apparently has said in either her deposition or testimony.

Senator SARBANES. Had you dealt with Ms. Hanson before?

Mr. ICKES. The only time I had dealt with her before was at the meeting on February 2nd. I did not know what she looked like when she came into the meeting, and it was the first time I'd met her. The only other time that I recall seeing her personally, that is face to face as opposed to television or something like that, is the following day.

Senator SARBANES. So it's your testimony here that you don't recall any such conversation of the sort that Ms. Hanson testified to in the course of her deposition?

Mr. ICKES. Absolutely no recollection whatsoever, Senator.

Senator BENNETT. Will the Senator yield for a clarification at least from my notes?

Senator SARBANES. Yes, of course.

Senator BENNETT. From my notes, from this morning's conversation with Ms. Williams, Maggie Williams, the meeting consisted of Mr. Ickes, Mr. Altman, herself and someone from the General Counsel's Office. She couldn't remember who. And that corresponds with you saying Mr. Eggleston was there but she said Mr. Altman was not on his way to a 6:00 Health Care meeting, but had to leave to go to the Hill. So it would seem to me from her testimony that Mr. Altman made his statement about the recusal prior to Ms. Hanson's arrival at this meeting and that maybe you are confused as to the timing circumstance because—

Senator SARBANES. I think that Senator Bennett is making an important point because Mr. Ickes is suggesting that Mr. Altman was going to another meeting and just stopped by to tell them, sort of. The alternative view is that Altman called and wanted to come over and wanted a group assembled, which is what Williams has told us, to tell them he was not going to recuse himself. Now, that squares of course with the Hanson deposition who says—let me just read it. "I was contacted by my secretary while I was at lunch out of the building. My secretary told me that there was a meeting at the White House right then, that Mr. Altman was waiting for me at the Treasury and that I was to come back immediately and go with him. I hung up, paid my bill, expressed my regrets to my luncheon companion, and went back to the Treasury. By the time I returned to the Treasury, Mr. Altman was gone, he had left for the White House. My secretary told me that I was to meet him in Ms. Williams' office. I went to the White House and found Ms. Williams' office" and then the rest of it I've already read.

Senator BENNETT. And that coincides with Ms. Williams' testimony this morning.

Senator SARBANES. But you have no understanding why Altman would concede to convene a meeting at the White House and gather people there in order to tell them following the meeting of February 2nd, that he had decided not to recuse himself?

Mr. ICKES. I recall, Senator, Mr. Altman saying to us at the meeting of the 2nd about which there's been a lot of testimony that he was going to decide whether or not to recuse himself and would be getting back in touch with us.

On, as far as the meetings on the 3rd, there's just a difference in recollection as to when Altman notified me and Ms. Williams of the fact that he had decided against recusal. I recall that it took place directly before the 6:00 meeting. I recall that it took place in Ms. Williams' office. I recall Ms. Williams and myself being there and I, my recollection, my best recollection, Senator, is that it took place just before that 6:00 meeting which is also held in Ms. Williams' office, typically 3 or 4 times a week. And both Ms. Williams, Mr. Altman, myself, and others attended that meeting on a regular basis which I chaired.

I could well be wrong. I concede that but I'm just trying to give you my best recollection as I sit here today. I recall running into, for lack of a better word, very briefly Ms. Hanson, again, in Ms. Williams' office much earlier in the day, shortly after noon. Again I could be wrong on the juxtaposition of time, but that's my best recollection.

Senator SARBANES. Well, my time is up.

The CHAIRMAN. If I may, just before yielding, I think the reason why this is relevant is that we're still trying to understand this whole recusal business and Altman having one state of mind, having it documented and coming in and then getting turned around and the whole question of coming back the next day asking for a meeting and announcing it, obviously lends itself to the inference that this was seen by him as a big deal in the White House as to whether he did or didn't do it.

If it's no big deal then why does he have to ask for a meeting and come back and convene a group to say what his decision is? Why doesn't he just go and make his decision and let that be that? I think it lends weight to the concerns that have been raised about whether or not he felt a degree of pressure to change his initial intention and—well, we can pursue that another time.

Senator Gramm.

Senator GRAMM. Thank you, Mr. Chairman.

Senator MOSELEY-BRAUN. Mr. Chairman, I haven't had a first round.

Senator D'AMATO. I thought we were going to do it on a revolving basis.

Senator DODD. I haven't either but this morning you established that I didn't know the rule to watch the time so under the agreement—

Senator MOSELEY-BRAUN. It was my understanding—I mean, I haven't even had a first round of questions.

Senator D'AMATO. Again, we are attempting to divide the time equally. That doesn't mean that one side doesn't give to, in this morning, in an effort of comedy, that's why I yielded the time. We have Members here who have been waiting and I hoped that we would do that and then if Members want to yield their time, that's a different matter.

Senator SARBANES. I want to make it clear to my colleague, the questions I just asked were on my first round because I was not able to be here to take the first round because I was debating an amendment on the floor of the Senate. So if there is some misunderstanding that I was asking a second round of questions, that's not the case.

Senator MOSELEY-BRAUN. It's perfectly all right. I was afraid, however, that the Chairman had forgotten that I had not had a first round.

The CHAIRMAN. No, no. You are never out of my mind, Senator Moseley-Braun.

Senator MOSELEY-BRAUN. Oh, thank you very much, Mr. Chairman.

The CHAIRMAN. I am very sensitive to the fact that you have not yet had an opportunity.

Senator DODD. Nor have I, Mr. Chairman.

The CHAIRMAN. Nor has Senator Dodd. There are two on our side who have not had an opportunity in this round but we have been proceeding on the rotation basis and as soon as Mr. Gramm finishes, then I will call on one or the other of you and then we'll continue until everybody has had a chance.

Senator GRAMM. Mr. Chairman, thank you.

Mr. Ickes, let me go back to you. I'm reading from a sworn deposition from Ms. Hanson. She's talking about a meeting in Maggie Williams' office on February 3rd. In order to set the context, the day before Mr. Altman had come to a meeting at the White House, and all the evidence, through sworn depositions, is that he was going to announce his decision to take himself out of the Madison investigation. He didn't do it. He comes back the next day, February 3rd. This is the meeting where he announces that he is going to stay on the Madison case.

Ms. Hanson got there late, but she says the following that relates to you: She says "what I remember of it is Mr. Ickes asked me who else knew that I had recommended to Mr. Altman that he recuse himself and I gave him three names, Michael Levy, Ben Nye, and I don't recall the third. He said that's good because if it gets out it will look bad." She said this under oath. Did you tell her that?

Mr. ICKES. Senator Gramm, as I've testified a few moments earlier, I have absolutely no recollection of saying that to Ms. Hanson. My only recollection is that I had a hello, good to see you, good-bye encounter with her in Ms. Williams' office. As I recall, it was sometime around noon or shortly thereafter.

Senator GRAMM. Can you think of any reason why you might have said that to her and might not remember it?

Mr. ICKES. I don't recall saying it, Senator Gramm. I simply do not recall saying anything of that nature to her.

Senator GRAMM. Let me go back, Mr. Lindsey, to a point that I was trying to develop with you. Unfortunately, the time ran out. Let me see if I understand, let me try to summarize. On September 29th, a notification came from Ms. Hanson who, she says under oath, was ordered by Mr. Altman to inform the White House that 9 criminal referrals were on their way to Washington and that the President and the First Lady were named in those referrals. You get that information indirectly from the person she calls.

You then talk to the gentleman, the President's friend, Jim Lyons, who did the investigation during the campaign to tell us that there was no problem with Whitewater. He tells you that somebody in the media is nosing around on this whole question of the criminal referrals, and you tell the President. You tell the President, as I heard, since you've heard this from Jim Lyons. The final point that I'd established was that you believed that the notification by the RTC and the Treasury Department about the criminal referrals was proper, ethical, legal. That's where I think we were when we ended.

Here is my question: Is it your contention that you never told the President, and that no one, to your knowledge, ever told the President, that you had received an official notification from the Treasury, RTC, about the criminal referrals? Was what the President was told simply about what Jim Lyons had said?

Mr. LINDSEY. Well, I believe what I probably indicated to him was that I had spoken with Jim Lyons, that there were press inquiries about criminal referrals, that it was my understanding that there were criminal referrals that had to do with Madison and that I understood that the Clintons were mentioned in those referrals, but that they were not targets or subjects of those referrals.

Now, I do not remember whether I got all that information from Mr. Lyons or whether, once Mr. Lyons made reference to the criminal referrals, I used information that Mr. Sloan had given me before that there were referrals, that they expected leaks of those referrals and that the referrals mentioned the President.

So I cannot tell you that I didn't go beyond what Jim Lyons told me. I may well have gone beyond what Mr. Lyons told me. But I do not believe it was improper to do so.

Senator GRAMM. What I was trying to determine is to what extent the fact that you heard it from Lyons had been the conduit of the information, or whether the fact that you heard it from the Treasury was the basis of your notification to the President. What you are saying is that it was a confluence of the two.

Mr. LINDSEY. The reason I understood I was being told the information was that they expected press leaks. At that point I was unaware of any—no inquiries had been made directly to us.

Senator GRAMM. It would be a month in fact before the first article came out from the—

Mr. LINDSEY. I must tell you that after I talked to Mr. Lyons and he indicated that he and others had had calls from the press, I was frankly surprised it was a month until the story was written. I expected there to be stories shortly thereafter. I did not believe that if the press had that information that they would sit on it for a month.

Senator GRAMM. Mr. Podesta, I have got one final question for you. We have gone all around the Altman letter of March 2nd, and we know of your good work in trying to communicate to Mr. Altman that there were at least three deficiencies in that letter. There is something that I have not heard, and I don't believe it's been asked. You were the person who actually called Roger Altman to give him the heads-up that the White House had looked at the testimony or the actual tape of the hearings and that you were concerned about these three deficiencies. We all know that and we all respect that.

We know from the letter that Roger Altman did not follow your advice and your counsel in the letter he sent on March 2nd. What we have not heard is what did Roger—could you, to the best of your recollection, give us the other end of the conversation? What did Roger Altman say when you told him about these three deficiencies, what was his reaction?

I'm interested in trying to understand his state of mind as to why he sent us a letter that clearly, in terms of full disclosure, violated that standard, particularly in view of what you had told him that you knew and that he either knew or should have known or could have been expected to know. What did he say on the other end of the line?

Mr. PODESTA. Senator, I hate the use of the words "heads-up."

Senator GRAMM. A perfectly legitimate “heads-up.” If you were working for me and I had done that, I would have expected a “heads-up.”

Mr. PODESTA. Let me try to give you my best recollection which is that I raised the issue of how the meeting had been set up. He—and I think—again, I think I had the transcript in front of me, and I have it in front of me today so I want to refer to it. He says I requested a meeting with Mr. Nussbaum, and I said that Mr. Nussbaum did not believe that the meeting had been requested with him and he said that’s right, I think I talked to Mack McLarty and asked for the meeting and he said who should be there and Mr. Altman said Mr. Nussbaum.

And I think we had a very brief discussion about that in which we both concluded that the record as it stood was fine and didn’t need to be corrected on that point. You may disagree with that but we thought it was not misleading.

Senator GRAMM. Let’s get to the three points, though, before my time—

Mr. PODESTA. That’s one.

Second, on recusal, I raised the issue of—that he had not mentioned recusal. I believe that he said to me that it had been raised with him at Treasury, that it had been in his talking points and that he had inadvertently forgotten to mention it. I said earlier in response to Senator Bryan’s question that we thought that it was a judgment call and I want to explain that. I think it was our view, and I think I expressed this, that it should be disclosed, but that it was a judgment call, that the four corners of the answer included in a description of the procedures of entering a tolling agreement included a description of recusing oneself in the context of a tolling agreement.

Finally, I raised with him, I raised with him Senator Bond’s question. I frankly do not remember whether I said there were fall meetings although I know that he has testified to that fact. I could have but I don’t really recall that. I said that—but I did read the question and the answer—and he—and the question is something to the effect that how did the White House—did the White House learn of the criminal referrals from the RTC, and his answer was not to my knowledge. Senator Bond pursued that, he said not to my knowledge, again. Mr. Altman said that’s correct, I don’t have any knowledge of that. And I said that I think that there may have been—and this is the part that’s fuzzy for me—I don’t know whether I said there were a couple of meetings or whether I just got briefly into the conversation. He said to me that he didn’t know whether he wanted me to inform him of additional facts at this point. I asked him—and I want to explain that because I saw your eyebrows go up. I think he was uncertain whether he should get more information from his side or whether he should get more information from the White House and I think that was a legitimate concern frankly.

But he said—we sparred a little bit on it. I said was Jean Hanson with you at the testimony. He said she was. I said you need to go get Jean Hanson, look at the transcript and consider whether this question and answer needs to be corrected. I thought that was

sufficient, to have him sit down with Jean Hanson and correct the record at that point.

Senator GRAMM. And you assumed he was going to do that when you hung up?

Mr. PODESTA. Absolutely.

The CHAIRMAN. That's a very important point, and we've touched on that before and it needs to be pursued beyond that because of the issue of—in my mind, I think a fair question—I won't pose it now, but a fair question would be in light of everything we know now, isn't it clear that after that conversation took place, that that first letter in here should have included all these items without the hair-splitting?

Mr. PODESTA. Senator, that would have been clearly the better course of action.

Senator D'AMATO. Mr. Chairman, I hope this takes 30 seconds.

Didn't Altman, because I think you testified, at least he did, say to you he didn't want you to tell him the details?

Mr. PODESTA. I don't believe I used that term. I believe we got to the point where I said there may be information at the agency. I believe I used the duty to supplement the record, and I think he just didn't want—I think he wanted to confirm or to look at that question and look at that issue with his people, not with me over the telephone.

The CHAIRMAN. Senator Moseley-Braun.

Senator MOSELEY-BRAUN. Thank you, Mr. Chairman, and I'm so glad the Senator from Texas is still here, because earlier today he referenced my hometown of Chicago, and I did not want to interfere with this hearing in his reference to the St. Valentine's Day Massacre was something that nobody heard anything about, and I just wanted to point out to the Senator from Texas that the St. Valentine's Day, the silence that accompanied the St. Valentine's Day Massacre had nothing on the silence that accompanied the failure of savings and loans in Texas. [Laughter.]

Now we have looked at a situation where the RTC has spent some \$25.4 billion with a B, billion dollars, just on RTC losses in Texas. Over 57 percent of the total savings and loan losses happened in Texas. Now, Whitewater, by comparison, comes to about 5/100 of 1 percent of the RTC losses total versus the amount that the taxpayers of the United States are spending on taxes.

Again, I took a little umbrage—I know my city has a reputation to recover from and we're working hard on it, Senator, to overcome the St. Valentine's Day Massacre. But I dare say it's going to take a long time before the taxpayers of this country overcome the \$25 billion that we have all contributed to bail out S&L's in Texas for which, by the way, I would mention we have as of March 15th only recovered some \$42,000 from insiders, total \$42,000 out of this \$25 billion. And as to which not a single penny was issued in investigation of some 86 out of 137 failed Texas S&L's. So you know, as the old people who live in glass houses or, alternatively, the pot should not call the kettle sour.

Senator GRAMM. I offered the amendment in this very Committee to assess the S&L's \$15 billion to begin promptly shutting down troubled thrifts, and my amendment was defeated basically along a party line vote, except for one Member, Senator Dodd, on your

side, who voted with me. That might have been avoided, had that not become somewhat of a partisan issue at that point.

Senator MOSELEY-BRAUN. Senator, I wasn't meaning to get into what you did or did not do with regard to the S&L's. Certainly you're not personally responsible for all these \$25 billion worth of payments. [Laughter.]

Senator DODD. I think we ought to have a hearing on that.

Senator GRAMM. I don't hold you responsible for the St. Valentine's Day Massacre.

Senator MOSELEY-BRAUN. There we are. In the spirit of bipartisan cooperation, I will turn to the witnesses. And I just want to nail down a couple of points.

I know the witnesses have been asked time and time again, but I just want to firm up a couple of points with regard to Mr. Altman's recusal decision, and just to make the record perfectly clear, did any of you—you already testified you did not tell him to recuse himself. Did any of the members of this panel suggest, insinuate or in any way communicate to Mr. Altman a negative reaction to his possible recusal?

Mr. ICKES. No, I told him it was entirely up to him whether or not he recused himself.

Senator MOSELEY-BRAUN. Just yes or no. Did you suggest, insinuate or in any way communicate a negative reaction?

Mr. ICKES. No.

Mr. STEPHANOPOULOS. No.

Mr. PODESTA. No.

Mr. LINDSEY. No.

Senator MOSELEY-BRAUN. Very good. All right. And then the second question. Mr. Stephanopoulos, in your deposition, you said, talking about the Jay Stephens' issue that Senator Hatch asked you about, you said in your deposition, and I quote, "I just couldn't understand how Jay Stephens was hired by the RTC. I thought it was a pure conflict of interest." On what did you base that opinion?

Mr. STEPHANOPOULOS. On several things, Senator. Number one, as I stated earlier, Jay Stephens was a U.S. Attorney appointed by President Reagan in the District of Columbia. In the beginning of 1993, President Clinton asked all U.S. Attorneys appointed by President Reagan to submit their resignations. Ninety-two did so without complaint.

Jay Stephens submitted that resignation and immediately went on a public attack of the President. He went on Nightline and all but accused him of obstruction of justice. He immediately began campaigning as a Senator for the Senate from Virginia, using this information. He was accused by several of his colleagues in the field of poor conduct in this matter, and I would just say his predecessor, another Republican U.S. Attorney in the District of Columbia Joseph diGenova called Mr. Stephens' conduct outrageous and unprofessional "former U.S. Attorneys shouldn't be running around and politicizing cases."

"Another author on legal ethics, Terence Reed, says Stephens may have breached a duty owed to the Government to preserve the confidences he obtained solely by virtue of his position of trust as a lawyer for the Government in the criminal investigation of Congressman Rostenkowski." He consistently went out on public at-



tacks of the President. He was accused by many of probably leaking Grand Jury information into the public, a serious breach of ethics in the public realm. And he was a obvious opponent of the President. I couldn't understand how the RTC could have done this. If they didn't know about this activity, they hadn't done a thorough background check. If they knew and picked him anyway, I thought it was simply unfair, and I would point out there were press reports subsequent to that.

I believe it was in Newsweek magazine where one banking regulator was quoted as saying he was deliberately picked in this case. I don't know if that's true or not. I don't know what other testimony you've received in this Committee. In fact, here the quote is. It was from Newsweek. It says "a banking regulator was deliberately chosen so the RTC could deflect charges that it wasn't being rigorous." Here was a partisan opponent, according to banking regulators, being deliberately picked. Even though I was very angry about this and to this day I still can't understand it, nobody in the White House did anything about it. Jay Stephens is still on the case. I have never spoken to anyone at the RTC. So it's unfair, but you have to live with it. All I can hope is that the spotlight of all these hearings may have at least ensured that Stephens does a fair job.

Senator MOSELEY-BRAUN. I appreciate that. Now, the final question, and again I would put this question with regard to each member and it's a generic question, but I think it's important, again, just to make sure that from your perspective this issue has been covered. The White House Counsel, as you know, issued a series of ethics memoranda detailing the procedures that White House staff should follow when contacting members of other Executive Branch agencies. And I would ask each of you, did you follow those procedures in this case?

Mr. ICKES. Well, I think, Senator, that as Mr. Stephanopoulos and I have discussed earlier that in some cases, we should have gone through the White House Counsel, did not, but the fact is we should have done it. But I think that there was an explanation for that, but the fact is I don't think that we followed them to the letter and the spirit in each and every case.

Mr. STEPHANOPOULOS. Madam, I think we tried to follow them. I think I've learned two big things in this case. Number one, do your best to control your temper at work and, number two, whenever something like this comes up, go to the Counsel before you make any phone calls at all.

Mr. PODESTA. Senator, I believe I was in compliance with those memoranda.

Mr. LINDSEY. I was, Senator.

Senator MOSELEY-BRAUN. Thank you very much. I believe the record will show that you were also and I appreciate it.

I have no further questions, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Moseley-Braun.

Senator D'AMATO. Senator Hatch.

The CHAIRMAN. Senator Hatch.

Senator HATCH. Thank you, Mr. Chairman.

I want to continue on where we were talking, Mr. Stephanopoulos. You said you weren't familiar with the sworn tes-

timony before the Committee about your efforts to get the RTC to fire——

Mr. STEPHANOPOULOS. I made no efforts, sir.

Senator HATCH. Well, about accusations that you made efforts to get the RTC to fire Mr. Stephens. Let me review it with you and we'll put it to bed.

Mr. STEPHANOPOULOS. Sure.

Senator HATCH. This is Ms. Hanson and this is in the U.S. Senate transcript of hearings before the U.S. Senate hearing on the Whitewater matter. This is Monday, August 1st.

Mr. STEPHANOPOULOS. May I see that, sir? May I have a copy in front of me?

Senator HATCH. I don't have a copy——

Mr. STEPHANOPOULOS. I'd like to look at the whole page to make sure of the context.

Senator HATCH. I'll send it to you. "Senator HATCH. In fact, Mr. Steiner told you the people at the White House wanted to see if they could get rid of Jay Stephens; isn't that correct?"

"Ms. HANSON. That is correct. He did say that. He said what I recall saying is do you believe they wanted to see if they can get rid of Jay Stephens."

The second one is also the transcript of hearings, our hearings here, and this is Tuesday, August 2—he's got it. I didn't tell you the page, though, on that. Did they give you the page?

Mr. STEPHANOPOULOS. What page is it?

Senator HATCH. Page 404, at the bottom. The one I'm referring to now is, if you have a copy of it, it's Tuesday, August 2, 1994, on page 436. Actually, it starts on page 435. It's the bottom line on page 435. Are you with me on that?

Mr. STEPHANOPOULOS. No, not yet, sir. Hold on.

Senator HATCH. Bottom line on page 435, where I'm asking a question.

"Senator HATCH. And in fact, you said to Mr. Steiner words to the effect that those guys at the White House must be crazy to try and fire Mr. Stephens; right?"

"Mr. ALTMAN. I don't remember my exact words, but I told them I thought it was an unwise thing to have done.

"Senator HATCH. That pretty well sums it up.

"Mr. ALTMAN. The essence of what you said is what I felt.

"Senator HATCH. And you were referring to Harold Ickes and Mr. Stephanopoulos when you made that statement.

"Mr. ALTMAN. Not as human beings. I have the highest regard for them. I thought bringing that subject up"—and I apparently interrupted him.

"Senator HATCH. I'm not trying to get you in trouble I want to get the facts down as far as I can. Were you referring to anyone else besides Ickes and Stephanopoulos?

"Mr. ALTMAN. No, sir."

Now, that's Tuesday, August 2nd. The third one was the one that we read here which came from the diary of Mr. Steiner. "After Howell Rains from The New York Times called to say that they were going to write a brutal editorial, Roger Altman decided to recuse himself. Harold and George then called to say that BC"—Bill Clinton I guess—was furious. They also asked how Jay Ste-

phens, the former USA, 'U.S. Attorney,' had been hired to be Outside Counsel in the case. Simply outrageous that RTC had hired him, but even more amazing, when George then suggested to me that we needed to find a way to get rid of him, persuaded George that firing him would be incredibly stupid and improper."

Now, do those three refresh your recollection at all with regard to these matters?

Mr. STEPHANOPOULOS. Well, there's nothing new there, sir. I would just say in all three instances, first of all, I had never directed anyone at the RTC to do anything, just get that down as a fact. Number two, as I read Mr. Altman's—

Senator HATCH. You did talk to Mr. Altman.

Mr. STEPHANOPOULOS. As I read Mr. Altman's two pages here, what he seems to be saying is that simply bringing up the subject of Jay Stephens in any way was unwise. I understand his feeling there, but I certainly didn't direct anybody to do anything. I don't know when the conversation with Ms. Hanson and Mr. Steiner occurred, so I can't respond to it in any way. What I can say, it may have happened before he ever talked to me for all I know. I just simply don't know.

Senator HATCH. Was somebody else at the White House who did these things?

Mr. STEPHANOPOULOS. Again, I had one brief conversation with Mr. Steiner about this subject. What I would go on to say is I've never met Ms. Hanson. I've never directed or asked her to do anything. I never met Ms. Kulka. I never directed or asked her to do anything. I have never directed anyone to do anything of this kind. I did grant that I got angry about Jay Stephens when I asked how he was hired. I did get angry. I testified to that. I've said that in public dozens of times. I've said it under sworn testimony several times as well. And I would point out that all of these people that you point out have given sworn testimony to the Office of Government Ethics, to the Special Counsel Mr. Fiske, to the House Committee on Banking, to the Senate Committee on Banking, all of them—

Senator HATCH. Let me interrupt you there.

Mr. STEPHANOPOULOS. Let me finish my sentence. The Office of Government Ethics found no ethical violations and Mr. Fiske found no criminal violations of any way. So the suggestion that in any way I did direct anyone to do anything like this is simply wrong.

Senator HATCH. Mr. Stephanopoulos, the fact of the matter is that these questions weren't asked by Special Counsel, and I'm asking them. I've asked them throughout this proceeding because I'm concerned about what happened.

Mr. STEPHANOPOULOS. Mr. Fiske asked me all about this area.

Senator HATCH. Frankly, it looks to me like dissembling. Somebody is lying here. Either Steiner is lying or Altman is lying or Ms. Hanson is lying or somebody else.

Mr. STEPHANOPOULOS. I don't agree with that, sir.

Senator HATCH. Let me just say this: I'm not reaching any conclusions, but have you—did you or Mr. Ickes ever review Title 18 USC 1505? That's the Federal Obstruction of Justice statute.

Mr. STEPHANOPOULOS. Mr. Fiske fully reviewed it and found absolutely no—

Senator HATCH. Did you and Mr. Ickes review it together?

Mr. STEPHANOPOULOS. No, sir.

Senator HATCH. They could all three be lying, I suppose. That's what's bothering a lot of us up here.

There are all kinds of inconsistencies.

Mr. STEPHANOPOULOS. There are no inconsistencies in my statements whatsoever.

Senator HATCH. There sure is between these three things and what you're saying here today. And I don't know who's telling the truth here, but somebody is not telling the truth.

Mr. STEPHANOPOULOS. Mr. Fiske asked all of these people all of these questions, sir, and he found absolutely no criminal violation. All of these questions have been covered—

Senator HATCH. I submit to you that Mr. Fiske did not do a good job in this area and he didn't ask some of these questions and he didn't go into it and pursue it the way he should have pursued.

Mr. STEPHANOPOULOS. I don't know how you know that.

Senator HATCH. How do you know it?

Mr. STEPHANOPOULOS. I was asked questions by Mr. Fiske.

Senator HATCH. What bothers me is we're asking the questions and we're getting the answers, except you deny it.

Mr. STEPHANOPOULOS. I give you my testimony as I've always done.

Senator HATCH. Mr. Stephanopoulos, let me say this. Joshua Steiner has testified that sometime during the week of February 14th, he received a telephone call from John Podesta or from Mr. Podesta's assistant, Todd Stern, regarding the RTC's hiring of Jay Stephens. When did you first learn about the hiring of Jay Stephens?

Mr. STEPHANOPOULOS. Much later than that. Either the 24th or the 25th.

Senator HATCH. It was at or near the time these calls were made?

Mr. STEPHANOPOULOS. Yes.

Mr. PODESTA. Senator, I feel compelled to correct the record.

Senator HATCH. Sure. I'd feel glad to have you do it, John. Go ahead.

Mr. PODESTA. I did not learn of Mr. Stephens' hiring until, at the earliest, the night of the 24th or the morning of the 25th, so I do not believe that Mr. Steiner's testimony can be correct on that point.

The CHAIRMAN. Senator Hatch, the time has run. If you had one follow-up right here, I would certainly permit it.

Senator HATCH. I do have one follow-up and I'll have to do the rest later.

The CHAIRMAN. I will protect your time later, so it's not as if you will not have other opportunities.

Senator HATCH. I appreciate that.

Mr. Stephanopoulos, is it your testimony under oath before the Congress that you never told, requested, asked or suggested that Mr. Steiner or Mr. Altman find a way to fire or get rid of Mr. Stephens?

Mr. STEPHANOPOULOS. I don't remember saying anything like that at all.

Senator HATCH. Do you deny that you said anything like that or had any conversation along those lines?

Mr. STEPHANOPOULOS. I have testified that I had a conversation asking how Jay Stephens came to be hired. I have testified that I got angry during that conversation.

Senator HATCH. You don't have a recollection, but do you deny it?

Mr. STEPHANOPOULOS. Again, I have no recollection of saying anything like that in the conversation.

Senator HATCH. I've got to tell you that saying I don't remember, I don't have a recollection doesn't suffice because this is an important matter. If you hadn't done such a thing, you would certainly know it. Had you done such a thing, you would certainly remember. I don't want to hold people to absolute recollection—

Mr. STEPHANOPOULOS. I know that I never directed anyone to take any action to impede an investigation.

Senator D'AMATO. That's not the question. You've been ducking this question now and ducking it and ducking it—

Senator DODD. He's answered the question.

Senator D'AMATO. No, he has not.

Senator DODD. I think he has.

Senator D'AMATO. He has not. He's suggesting, but he hasn't answered the question.

Senator DODD. Let him answer the question again.

Senator HATCH. Let me put it one more time and you say whatever you want to. I want you to search your memory and I want to ask you one more time, under oath, did you ever tell, request, ask or suggest that Mr. Steiner or Mr. Altman or anybody else for that matter, find a way to fire or get rid of Mr. Stephens?

Mr. STEPHANOPOULOS. I never directed anyone to impede with that investigation in any way.

Senator HATCH. Did you ever ask—

Mr. STEPHANOPOULOS. I never directed anyone to do anything like that. I have testified to my conversation.

The CHAIRMAN. Senator Dodd.

Senator DODD. Thank you very much, Mr. Chairman.

Let me just quickly ask by the way, what is Mr. Stephens doing today?

Mr. STEPHANOPOULOS. He's investigating the matter of Madison Guaranty.

Senator DODD. So he's still on the job.

Mr. STEPHANOPOULOS. Yes, sir.

Senator DODD. I have three areas of concern, Mr. Chairman, that I think these witnesses can be of help to us. The first is the so-called pressure issue. I hate to use those words, but those seem to be the words that have become operative in regard to Mr. Altman.

The second issue that I want to pursue is with you, Mr. Ickes, regarding the February 2nd meeting and the issue of what Mr. Altman said in that meeting regarding the statute of limitations and the date of February 28th, the date when the statute would run out.

The third set of issues that this group of four witnesses can be of help with, is the issue of Mr. Altman's testimony before this Committee on the 24th of February and the issue regarding the ab-

sence of any reference to the recusal issue and the two other meetings that occurred.

So those are the three sets of issues. Quickly with regard to the first one, the so-called pressure issue, I'll ask all of you if you want to just quickly comment on this. I'm looking at a letter written that's been provided to us, from Mr. Altman to the President of the United States, and I gather it was sent on February 25th or thereabouts. I won't read the whole letter, Mr. Chairman. I'll ask that it be included in the record.

The CHAIRMAN. Without objection, it's so ordered.

Senator DODD. In referencing the February 2nd meeting, Mr. Altman says to the President "the decision to have that meeting with your staff was dumb, and I take full responsibility for it." Let me ask the witnesses, is there any doubt in any of your minds that the holding of that meeting—I don't know if I want to use the word "dumb" or not, Mr. Altman's word, but it was certainly a mistake. Mr. Lindsey.

Mr. LINDSEY. I wouldn't disagree with Mr. Altman's assessment.

Senator DODD. Mr. Podesta.

Mr. PODESTA. I agree with Mr. Cutler and Mr. Altman.

Mr. STEPHANOPOULOS. I wish it hadn't happened.

Mr. ICKES. Likewise.

Senator DODD. Let me say on this point, Mr. Chairman, because we've heard a lot of testimony back and forth on this issue, and I fully respect that different colleagues can arrive at different conclusions about this. I think it's worthwhile to note for those who may not be as familiar with who Mr. Altman is and his background, that he had been confirmed by the Senate, worked in a previous Administration in the 1980's, spent some 11 or 12 years on Wall Street as an investment banker, and had come back into this Administration. He is 48 years old; he's not 28. He's an adult, and has been through a number of different processes. A lot of things can happen, and a lot of people know this person. I think I've met him twice, frankly.

But it doesn't strike me this is someone who was to be pressured. He obviously was having some real questions about this himself, and he said in testimony he wished he had just made it in the first place, so obviously he's uncertain during all of this. That is obviously clear. But the question of whether or not that uncertainty was arrived at as a result of pressure or his own doubts about the decision, I think it's pretty clear.

In my view, it was because of his own doubts about it rather than someone exercising pressure. That's just my opinion. Let me move very quickly to the second issue, which I think is extremely important. Mr. Ickes, this has to do with your testimony, and the meeting on February 2nd. I want to return to your testimony, if I may. First, as I understand it, you took notes at that meeting, and I think you included them with your opening statement; is that not correct?

Mr. ICKES. I did, Senator Dodd.

Senator DODD. Do these notes reflect what was being said at that meeting by Mr. Altman?

Mr. ICKES. Well, the notes are very summary. It was a meeting, in my recollection, of some 45 minutes or so, so these notes are

some aspects of that meeting, and some of those—most of those notes, to my recollection, reflect what was being said in some respects by Mr. Altman.

Senator DODD. These notes reflect, at least to the extent they reflect what was said at that meeting, not necessarily everything that was said at that meeting, but they're an accurate reflection in your mind regarding the items of which you took notes about.

Mr. ICKES. Yes.

Senator DODD. Now, you gave a deposition to this Committee, did you not?

Mr. ICKES. I did, sir.

Senator DODD. Now, I'm going to read some of this deposition, if I may. I'll start on page 121 around line 11. This is Mr. Codinha, our Chief Counsel who asked "did Mr. Altman discuss the steps that the RTC was taking to get the information that they would need in order to make a determination on the statute of limitations?" Mr. Bennett—now, Mr. Bennett is your attorney.

Mr. ICKES. He is.

Senator DODD. Is that Mr. Robert Bennett?

Mr. ICKES. Yes, sir.

Senator DODD. "Mr. BENNETT: I'm going to ask, in fairness to the witness, if what your objective is to find out what happened, if you could show him his notes which were taken in real time. I mean, if you want an accurate rather than a guessing years later.

"Mr. CODINHA. Years later?

"Mr. BENNETT. Not years later. Months and months. The point is the most accurate record is his contemporaneous notes, so we don't get into a guessing game. I'd ask you to show him his notes.

"By Mr. Codinha.

"Question: Mr. Ickes, as best you recall, what was said about the subject?

"Mr. BENNETT. Go ahead. Guess. Do your best."

Is that the advice of your Counsel, to guess?

Mr. ICKES. I think that that is an accurate transcription of Mr. Bennett's—

Senator DODD. Let me make a point here because depositions are different than trials, although someone might conclude we are in a trial setting. But in depositions it's not necessary nor is it required—in fact, it's allowed in many cases for witnesses to bring notes and extraneous material to refresh their memories in a deposition.

Normally, in the conduct of a trial or a hearing, people do bring notes and are allowed to refer to those notes in order to refresh their memory. So what Mr. Codinha did in this particular case is entirely proper in the conduct of depositions, and I want that to be very, very clear here. But the fact of the matter is you were not allowed to look at your notes in responding to the questions. Is that true?

Mr. ICKES. That is correct, Senator.

Senator DODD. And your Counsel said, then, to guess in your answers. That was his advice.

Mr. ICKES. He said "go ahead, guess. Do your best."

Senator DODD. I'd like you to take a look at your notes, if you can. After you were asked to look at your notes—well, you've done

that. Let me go back to this point that Senator Kerry was raising earlier about the issue of whether or not you heard Mr. Altman state that it would be—I'm paraphrasing here—impossible or almost impossible to bring the claims prior to February 28 because they wouldn't be ready.

Mr. ICKES. Senator, as I think I made—I hope I made clear in my opening statement, there's a distinction between deciding whether or not an agency should go ahead and litigate a full blown case, and there's obviously a number of considerations that go into that. Chief among them, whether there's a reasonable possibility of winning, the cost involved, et cetera, as opposed to whether there's sufficient evidence to file a claim.

It was my understanding, based on my notes that I took, which basically reflect what Mr. Altman was telling us in part during that meeting, that the RTC—the statute of limitations was approaching. The deadline, as I understood it, was February 28th. That had been discussed during January by Senator D'Amato and other Members of the Senate, that the statute of limitations was drawing to a close, but that given that, as I understood what Mr. Altman was saying, they could either seek a tolling agreement from among the various parties that might be involved in any possible civil lawsuit or commence litigation to preserve the claim.

So as I think I tried to make clear in my opening statement, I understood that they could either seek a tolling agreement or that they could file a protective lawsuit, for lack of a better word.

Senator DODD. That's very important in my view. There's a distinction here. The distinction between a completed suit, which would mean that you'd have everything ready, absolutely tight and set to go. Nothing hanging out?

Mr. ICKES. And to have made a final decision based on the various factors including the signoff by the various people in the agency, Senator.

Senator DODD. As opposed to a protective suit, which means that you could file that without having necessarily all of the information necessary—is it Rule 11 test. I believe all of us are familiar that Ms. Kulka, who was in charge of these, stated that she was confident that could be done, so that is a bit different from what we've been told your testimony was. Mr. Altman then made—did he make it clear to you that a protective suit could be brought?

Mr. ICKES. It was—based on his discussion and based on my notes of his discussion and certainly based on his talking points, which I've subsequently seen—as I've testified, I did not see them at the time of the meeting on the 2nd, it was clear to me that one of the considerations being taken into account at the RTC was whether or not they would file a protective suit. That was different, in my mind, as to whether they had sufficient evidence and had taken into account all the conversations to proceed with a full blown lawsuit.

Senator DODD. Now, did you tell the President or the First Lady about the February 2nd meeting?

Mr. ICKES. I've testified that I did. I don't recall when or where.

Senator DODD. Did you tell the President and the First Lady that they could decline to sign a tolling agreement because the RTC would not be able to put a case before the February 28th deadline?



Mr. ICKES. I am confident that I did not, Senator.

Senator DODD. Mr. Chairman, I think that makes it a bit clear, in my view, the distinction between a completed suit and a protective suit and I think that distinction is important.

I see the clock has run out—but we've received testimony and I'm sure my colleagues will remember this, from Ms. Kulka about the February 1st meeting with Mr. Altman in which she testifies that she received full authority to proceed. She told Mr. Altman there was no difficulty in proceeding on the 28th, and that with the exception of Ms. Williams, who I think said she really couldn't remember exactly what was said on this point—I may be wrong on that—but my recollection is everyone else recalled the conversation pretty much as Mr. Altman stated it was.

Now what you're saying to us, Mr. Ickes, is that the distinction between the completed suit and the protective suit better characterizes your recollection of that meeting.

Mr. ICKES. It was certainly my recollection, Senator.

The CHAIRMAN. Thank you, Senator Dodd.

Senator D'Amato.

Senator D'AMATO. Thank you, Mr. Chairman—

Senator DOMENICI. Mr. Chairman, I wonder if I could ask a couple of questions. Senator D'Amato?

Senator D'AMATO. Certainly.

Senator DOMENICI. I won't use 10 minutes, if you're in a hurry, but I haven't asked any questions of this panel yet. Mr. Ickes, when these hearings opened, I had read your deposition, and I made a statement in my opening remarks on one of the most important issues regarding your deposition. Now, that's not too long ago, your deposition?

Mr. ICKES. I think the date, Senator, was Sunday, July 24th.

Senator DOMENICI. All right. Now, Mr. Ickes you stated in your deposition that there was no mention of this suit to preserve a claim. It is nowhere in your deposition. Your deposition says the purpose of this meeting and the focus of this discussion was the amount of time in which he felt this investigation might be wrapped up. And he said, at least in so many words, that it was his understanding that the investigation probably would not be concluded and a determination could not be made by the RTC's General Counsel as to whether there was a basis for a civil claim until after the expiration of that statute of limitations.

Mr. Ickes, you know what I think has happened? I think you all have been talking about this, and this is the most damaging testimony with reference to why the White House did not want Mr. Altman to get out of this position in the RTC. Your testimony under oath establishes that the White House could very well want him in there because he's the decisionmaker—notwithstanding this "de facto recusal" business—and there were still 3 weeks before the statute of limitation would run. In fact, he would be the one making a decision as to whether or not this lawsuit got filed.

Now, frankly, Mr. Altman took the witness stand and he said three different times, "wait 'til Mr. Ickes comes up here; he will deny this or he will change his mind about this." And guess what happened? You did. In fact, it will be very tough for anybody to understand this record as to what you really are saying. You told Sen-

ator D'Amato three times that what you said in your deposition was true. Now, there is absolutely no mention in this about a "protective suit." And it appears nowhere in your deposition. All of a sudden, it appears today.

And it appears in your opening remarks, and the reason I think it occurred, and the reason I think that Mr. Altman was so sure it was going to occur is because the talk around the White House, at least between Altman and you or Counsel, Legal Counsel, was "Mr. Ickes, you got a big problem." You've got a big problem.

Senator DODD. Would you yield on that point just for a moment?

Senator DOMENICI. Let me finish the thought and I'd be pleased to yield. I haven't had a chance to talk yet.

Senator DODD. I haven't either. But I might point, you've got a cumulation of testimony, Ms. Kulka on February 1st, and then all the other participants in that meeting with the exception of one who's unclear. And even if you disregard Mr. Ickes, it seems to me when you're looking and trying to determine what was said—Ms. Kulka, who has no axe to grind, here is one thing but—

Senator D'AMATO. She wasn't there.

Senator DODD. I'm talking.

Senator D'AMATO. Wait a minute.

Senator DODD. Wait a second.

Senator D'AMATO. I let you go well over your time; didn't say a word. You ask him and make a statement that's incorrect. Ms. Kulka was not there.

Senator KERRY. Senator—

Senator DODD. I said on the February 1st meeting—

Senator DOMENICI. Could I retain my time?

Senator DODD. Certainly.

Senator DOMENICI. Would you not charge me, I've had no opportunity to say anything thus far and I wanted to make my point.

The CHAIRMAN. Fair enough.

Senator DOMENICI. Frankly, it seems to me that you assumed—rightfully or wrongfully—that when Mr. Roger Altman talked about recusal at the February 2nd meeting, you assume that it was very important that he stay in that job. I cannot extract anything different than that from what occurred. Is it true or not that you still considered him to be the ultimate decisionmaker until he actually recused himself?

Mr. ICKES. Senator, may I respond?

Senator DOMENICI. That's the question. Answer it.

Mr. ICKES. May I respond?

Senator DOMENICI. Of course. Answer it.

Mr. ICKES. First of all, you stated, I think, earlier in your long statement that Mr. Altman and I had gotten together on this testimony. That is absolutely untrue, Senator. I've never discussed with Mr. Altman this testimony or anything about it, point one, and I want that very clear for the record.

Number two—number two, Senator, this statement that you've referred to—one can quibble about the words that were used, but the fact of the matter is there is a distinction, and I have made that distinction both in my testimony here today and in my opening statement, between a final determination as whether to proceed with a lawsuit, and there are a number of considerations, and the

lawyers on this panel know that. One is cost. Two is possibility of outcome.

Three, when you're dealing with a Federal agency, presumably there's a chain of command you have to go through before those final decisions are made. They often take time. That is different, Senator, from having enough evidence to file a lawsuit to preserve a claim. So that is what I was talking about. I think I made that very clear both in my testimony here today and in my opening statement.

And the final point, Senator, I was never asked the follow-up questions by Counsel.

Senator DOMENICI. Mr. Ickes, do you have any idea how Roger Altman could be so certain before us that you were going to disavow your earlier statement about what was said with reference to the status of the preparation of the lawsuit? Where might he have—

Mr. ICKES. Senator, you'll have to ask Mr. Altman that. I did not hear his statement. I did not watch the proceedings. I don't know what he said, but I do know one thing and I've stated it several times before this hearing, that during the February 2nd meeting, it's my clear understanding from what Mr. Altman said that he was going to follow the recommendation of the staff attorneys. So while he was still technically the acting head or whatever his position was of the RTC, he basically, in my view, had taken himself out of the decisionmaking chain with respect to the Madison inquiry.

Senator KERRY. Would my friend yield?

Senator DOMENICI. Let me state one further thing.

See if this is correct. You had a chance to correct this deposition, did you not?

Mr. ICKES. I had a chance to correct it. I saw no need to correct it, Senator.

Senator DOMENICI. And you had what some people think is the best lawyer in the United States on defense matters representing you, and you did not see fit to change this record with reference to this protective suit that you didn't tell us about?

Mr. ICKES. Senator, I wasn't asked that question and I made clear in my opening statement the distinctions.

The CHAIRMAN. Senator Domenici—

Senator DOMENICI. Is my time up?

The CHAIRMAN. Time is up, but there will be another round for you to pursue this as much as you care to.

Senator DOMENICI. I surely want to ask Mr. Ickes exactly what he considered the head of the RTC to be at that point. He maintains that he apparently was a figure head and I don't think they were treating him as a figure head. I think that's a very, very important issue for us to find the answer to.

Mr. ICKES. Senator, I want to make two additional points, if I may. My contemporaneous notes, which are on file with the Committee and are attached, I think, to my opening statement, made clear that one of the alternatives open to the RTC was to commence litigation to preserve claim, number one. Number two, I've been informed by my attorney that the only corrections we were permitted to make on the record were typographical.

Senator KERRY. Can I point out to my friend from New Mexico, Senator——

Senator DOMENICI. Let me say that's not how we understand the depositions, and we'll just ask that question later on. You were given time to correct this record, not just to correct typographical errors.

The CHAIRMAN. Before calling on you, Senator Kerry——

Senator DODD. What's the answer to that?

Senator D'AMATO. There are Counsel here. Is that true?

Mr. PODESTA. That was not my understanding.

Mr. STEPHANOPOULOS. Mine neither.

Senator DODD. What's the answer to the question?

Senator D'AMATO. What was the limitations as it relates to notes or corrections of records? We have both Counsel here, Majority.

There's no limitation as it relates to corrections. Counsel said that they're on the record. It is said that if someone wants to correct the record and it's substantive, he may be redeposed on that change. There is no limitation, nothing about that you can make just typographical corrections, and as it relates to notes, the record shows very clearly that the notes were available.

The CHAIRMAN. In any event, is that clear to you, Senator Dodd?

Senator DODD. It is, but it's quite clear as well, the point you're giving, the testimony, and this is done in depositions for good reason, that a witness in a deposition is not allowed to refer to their notes.

Mr. STEPHANOPOULOS. May I read into the record what was read to us by the Counsels when we testified?

The CHAIRMAN. Just a moment. I'll permit you to do that.

Senator DODD. Let me complete it here. There's a point. I'm looking at his testimony. He's got his lawyer saying "guess." You call in the best lawyer in America—when my lawyer tells me to guess—you've got a testimony that's prefaced by "guess." Now your notes are in front of you. That's a little disconcerting, but what he does and I think it's so important, Pete, on page 122, line 18 down to line 22, this is Mr. Ickes, that "it was his understanding"—and he's talking about Altman—"that the investigation probably could not be concluded and that a determination could not it be made by the RTC's General Counsel as to whether there was a basis for a civil claim."

Now, we know that's not true because Ms. Kulka testifies that that's not the case on February 1. So the issue is concluded. Now, if you could look at your notes instead of saying concluded, completed or concluded suit, and you see that the options are commence litigation to preserve a claim, that's your protective claim, or seek a tolling agreement. So your notes could help you in responding to that kind of a question. Instead, you have Mr. Bennett say, "Go ahead. Guess. Do your best." I just point out that's a bit of a problem when you're getting into this.

Senator KERRY. May I also point out——

Senator DOMENICI. Will you yield since I yielded to you?

The CHAIRMAN. I'm going to make a point here. I want to read into the record, so there's no further confusion about it, what the procedure was that was available for correcting testimony in a dep-

osition because this was the format that we followed, and I'm just going to read it verbatim into the record.

"The deposition after it's prepared will be kept Committee confidential. However, if your attorney wants to review it or you want to review it, you can make arrangements, and we spell out how to do that and for you to read it." I'm dropping down, "it may be reviewed," and tells the time in which it is generally available for doing that and it says—it makes it very clear that it can be reviewed by the person giving the deposition or the attorney. Then it says "with respect to changes, there will be a jurat page supplied to you to make corrections, so if you find a mistake in the review, you put it on that page. Your attorney can explain a jurat page. That will allow you to make changes, for instance, if a person's name is used and it's misspelled. That can be changed. Minor corrections in transcription if there's some grammatical change you wish to make.

"However, I will tell you if there are changes made in the substance of an answer, for example, a yes changing to a no, that may require you to be brought back in and redeposed and I want to make you aware of that. It should not deter you, however, from making changes. Since some Counsel believe they can make changes in the depositions themselves, we have clarified if changes are made on the jurat page, they are to be made by the witness and not by the Counsel."

That was the instruction that was given. That's the ground rule that we followed. I just want to put that into the record so that it's clear that there was that opportunity for review, that is the normal practice in which it's done, and I take it that that's the instruction that you all received at the time, and that there's really no dispute about that part of the procedure. Would that be fair?

Mr. ICKES. There's no dispute about that, Mr. Chairman.

The CHAIRMAN. Very good. Senator Domenici.

Senator DOMENICI. Senator Dodd, with reference to the note taking, could I refer you to page 87 of the deposition of Mr. Ickes?

Senator DODD. I'm going to have to get that.

Senator DOMENICI. Let me read it for you.

"Question: Did individuals take notes?"—

Senator DODD. Where are you on the page, Pete?

Senator DOMENICI. Page 87, second line.

Question: Did individuals take notes at those meetings, if you noticed?

Answer: Some individuals did.

Question: Did you take notes? [Witness conferred with counsel.]

Answer: I kept notes.

Question: Would it be correct to say that if they pertained to the scope of the Senate Resolution 229 that they have been delivered to the Committee?

Answer: Yes.

Question: And you have reviewed your notes yourself or along with your attorney?

Answer: I have.

So it isn't as if he didn't review his notes. He had reviewed them and admitted that and maybe that's the—

Senator DODD. I don't disagree with that. I'm saying if you're answering a question, you've been a witness, I've been a witness, and you say let me look at my notes as I answer you, or in a trial you have the right to look at your notes to refresh your memory. So the fact that you have, you've been over them, the fact that you're re-

sponding to a question and your lawyer says, guess, do your best, when we're now down to an important matter in this matter I don't like to rely on a guess, that's why I went over the distinction between a concluded claim and a protective claim. I appreciate you reading into the record because our witnesses do have an opportunity—we're on a tight schedule but nonetheless, they have a right to come back if they didn't like it and be deposed.

The CHAIRMAN. Absolutely. Senator Shelby.

Mr. ICKES. Mr. Chairman, I just want to make clear here. I think the statement read by the Senator is a little out of context. If you go to the preceding page, page 86—

Senator DODD. Which Senator are you talking about now?

Mr. ICKES. Senator Domenici. I think if you read the lead-in to that, on line 17, page 86.

*Question:* Did anyone keep notes or records of the White House response group meetings? First, let me ask were official records of the White House Whitewater response team kept?

*Answer:* No.

*Question:* Was someone required to take notes?

*Answer:* No.

Then the following question. So I think the—the following aspect that was already read. So I think that the notes referred to on page 87 referred to notes that were taken in connection or not taken in connection with the Whitewater response team. In any event, the fact of the matter is I was not permitted by the Senate Counsel to review this one page of notes that I had taken during the—or in connection with the meeting on February 2nd. And those notes make very clear that one of the things that was being discussed, one of the alternatives was to commence litigation to preserve a claim.

The CHAIRMAN. Let me just stop you there. Is it my understanding when you use the phrase protective suit—protective claim, are you using that as another way of expressing point B on your notes, where it says “or, B, commence litigation to preserve claim”?

Mr. ICKES. It is, Senator. It's just a different phrasing.

The CHAIRMAN. I just wanted to understand your use of the word, and so even though it doesn't say protective claim here, and you've used that, you're using that interchangeably with the words on line B.

Mr. ICKES. That's correct, Senator.

The CHAIRMAN. Senator Shelby.

Senator SHELBY. Thank you, Mr. Chairman. I know some of this has been gone over, and I tried to get into it, but I'm going to go into it one more time. Mr. Podesta, on the 24th—I believe it was the 24th of February when Mr. Altman testified at the oversight hearing of the Banking Committee, this Committee. You were at the White House that day, were you not?

Mr. PODESTA. I was.

Senator SHELBY. You did not come up to the Committee hearing.

Mr. PODESTA. I did not.

Senator SHELBY. Mr. Eggleston, as you well know, testified that he called you at the White House. He ran out of here, ran out of the room—I believe it was the other room but in this building, Dirksen Building, and he knew immediately, although he was seat-

ed near the back of the room, that something had gone wrong, in other words, that Mr. Altman was not forthcoming, was not candid and he called like an emergency call, and he said he called you. Do you recall the call?

Mr. PODESTA. Senator, I don't believe I received that call.

Senator SHELBY. Could it have been someone in your office?

Mr. PODESTA. It could have been. Perhaps I could explain. I spent virtually the entire day in meetings with the FBI and later with some phone company representatives on some legislation that is now working its way through Congress to help update the Wiretap Act. I don't believe I was available to receive the call. He could have called my deputy, Mr. Stern.

Senator SHELBY. Wasn't that call sort of like an SOS call? It was an emergency call there to the White House.

Mr. PODESTA. I was not paged—I don't think—I wouldn't describe it that way. I did say, and I think in my testimony, that I think the next day, Mr. Eggleston was concerned about this, and he came and saw me.

Senator SHELBY. What did he say to you? He came to see you—

Mr. PODESTA. He was concerned that the subject—in Mr. Altman's recounting of the meeting on February 2nd, the subject of recusal was not mentioned in his testimony on the 24th, and he was concerned about that.

Senator SHELBY. Did he say that you all were going to have to control this some way? You're going to have to rehabilitate Mr. Altman's or supplement his testimony?

Mr. PODESTA. I think he thought that the record ought to be corrected on the point.

Senator SHELBY. Didn't you get involved in this, sort of handling this crisis?

Mr. PODESTA. Well—

Senator SHELBY. You were the point man, weren't you, at the White House?

Mr. PODESTA. I understand he described me that way.

Senator SHELBY. Sir?

Mr. PODESTA. I understand he described me that way, but let me try to explain it.

Senator SHELBY. I won't call you the point man. You were the man—

Mr. PODESTA. Mr. Eggleston who works in the Counsel's Office who works with Mr. Nussbaum contacted Mr. Nussbaum, I believe, over the weekend. We wanted to see a transcript. We got a transcript. I believe we got the transcript on Monday, and I wanted to confer with Mr. Nussbaum on the matter. He had been at the meeting on February 2nd, and he was the Counsel. I believe the Counsel's Office staff conferred on Monday, the 28th. I got back together with him on the 1st, and we went through this in some detail. We had a meeting that lasted a couple hours.

Senator SHELBY. You had a meeting to go through the transcript.

Mr. PODESTA. On March 1st, which was a Tuesday.

Senator SHELBY. What was your feeling after going through the transcript? You knew there was a lot of damage done there, didn't you?

Mr. PODESTA. I think we had—

Senator SHELBY. A problem on your hand.

Mr. PODESTA. A problem.

Senator SHELBY. What did you do then?

Mr. PODESTA. I called Mr. Altman.

Senator SHELBY. And what did you say to him?

Mr. PODESTA. I raised the three issues—

Senator SHELBY. Did you say you've got a big problem or what?

Mr. PODESTA. Well, I don't want to be repetitive—I've testified to this in great detail, but I think there were three points. On one point, with regard to who was at the meeting, I thought there was no problem after discussing it with Mr. Altman. On the second point, on recusal, I thought it was his decision, but that it was best to correct the record. On the third point, which was the meetings point, the fall meetings, as I said, I've described a rather truncated conversation, but I think I made it clear to him that we thought something needed to be done on that.

Senator SHELBY. You said it was a real problem, not just on recusal but the failure to disclose the meeting—

Mr. PODESTA. At the time I thought, in fact, that was the more substantial problem.

Senator SHELBY. And who else thought that besides Mr. Eggleston? I know you weren't acting alone down there? You had some good minds there.

Mr. PODESTA. I think what I went back to Mr. Altman with was the consensus, at least at the meeting, although it's conceivable that different people kind of rank these things slightly differently. I don't know.

Senator SHELBY. Were any of the other people at the table with you tonight, were they involved in trying to—

Mr. PODESTA. Mr. Lindsey.

Senator SHELBY. Correct it? Mr. Lindsey. Mr. Bruce Lindsey.

What was Mr. Altman—what did he have to say when you told him there was a problem here and this had to be corrected? What did he say? What did he say to you?

Mr. PODESTA. I described, on the first point, I think we both concluded that he didn't need to correct it.

Senator SHELBY. Not what we concluded. What he said.

Mr. PODESTA. I think he said that he thought the testimony was fair on who set up the meeting.

Senator SHELBY. He felt the testimony was fair that he had given before the Banking Committee? He said that?

Mr. PODESTA. On the single point of who set up the meeting.

Senator SHELBY. OK.

Mr. PODESTA. How the meeting was set up is probably a better way to put it. On recusal he said he was going to continue to consider it. It had been raised and that he would continue to look at that issue, that it was a topic that he would consider. On the meetings point—

Senator SHELBY. The meetings, that's right.

Mr. PODESTA. On the fall meetings point, as I said, in my previous testimony, I think that he didn't want to get into the details with me. I thought that was appropriate at the time. I still think it's appropriate.

Senator SHELBY. Was he acting cavalier over the phone to you?



Mr. PODESTA. No, he was not.

Senator SHELBY. Was this face to face?

Mr. PODESTA. No, it was over the phone.

Senator SHELBY. How long was it from the time you talked with him until he wrote the first letter trying to supplement the record?

Mr. PODESTA. It was the next day.

Senator SHELBY. And then how many days until the next letter?

Mr. PODESTA. I believe one day.

Senator SHELBY. One day.

Mr. PODESTA. One more day.

Senator SHELBY. And what about the next day?

Mr. PODESTA. The third letter was on the 11th, I think.

Senator SHELBY. Was Mr. Altman dribbling this information out to the Committee to supplement his testimony as pressure mounted on him through the news media and through the White House, that you all knew he had not told the whole truth and nothing but the truth to this Banking Oversight Committee and the pressure was mounting on him so he was dribbling it out as the pressure demanded?

Mr. PODESTA. I want to answer that in two parts. My impression in the phone conversation was that Mr. Altman on the meetings point and on recusal point thought he had done his best and had no knowledge of the meetings when he said that on the 24th. That was my impression.

With regard to how, then, he corrected the record and the taking of the four letters to address all those points, I think I've already said that I think that would have been better handled had it been done the next day in one letter and more specifically.

Senator SHELBY. Mr. Podesta, it would have been better handled if he had told the whole accounting of the situation candidly in the Banking hearing, would it not?

Mr. PODESTA. It would certainly had been better if he had given a whole accounting. The only thing I'm quibbling with you about, Senator, is that I think my impression on March 1st was he thought that he had been candid on the 24th to the extent of his knowledge.

Senator SHELBY. Does that—is that backed up by Mr. Steiner's diary when he said he gracefully ducked the question and did not refer to phone calls he had had and so forth?

Mr. PODESTA. No.

Senator SHELBY. In other words, what you're saying here, your impression of Mr. Altman, the way he felt—

Mr. PODESTA. Was just—

Senator SHELBY. It was contrary to Mr. Steiner's diary.

Mr. PODESTA. My only conversation with Mr. Altman was a single phone conversation on March 1st, and that's just my best impression.

The CHAIRMAN. You gave him a heads-up, among other things, did you not?

Mr. PODESTA. I ran through those three issues.

Senator SHELBY. But you realize that you all had a real problem at the White House?

Mr. PODESTA. At least with regard to the fall meetings, and I think with recusal. We knew we had a problem.

Senator SHELBY. With regard to Mr. Altman's testimony. Thank you.

The CHAIRMAN. Thank you, Senator Shelby.

Senator D'Amato.

Senator D'AMATO. Thank you, Mr. Chairman.

Mr. Ickes, do you have the depositions there you testified to?

Mr. ICKES. I do.

Senator D'AMATO. Would you turn to page 132. This refers to—we're talking about the meeting of February 2nd and the question asked you is "what did Mr. Altman say about recusal?" Your answer: "The gist of what he said, and this came toward the very latter part of the meeting and was—I think the bulk of the meeting was taken up with his presentation and our questions and his answers and discussions about the investigation and its relationship to the statute of limitations." Is that true?

Mr. ICKES. What?

Senator D'AMATO. Is that true?

Mr. ICKES. As I testified, yes.

Senator D'AMATO. Now, a few minutes ago when you were answering Senator Domenici's questions, you testified that Altman had taken himself out of the decisionmaking chain; is that true?

Mr. ICKES. That's the best of my recollection, Senator.

Senator D'AMATO. Just a few minutes ago—

Mr. ICKES. Could I just finish my answer, sir?

Senator D'AMATO. Certainly.

Mr. ICKES. The best of my recollection, is during the course of that meeting, I recall him saying that he was going to abide by whatever or follow whatever recommendations were made by the staff attorneys.

Senator D'AMATO. And he was taking himself out of the decision-making chain?

Mr. ICKES. I don't know if I wanted to—I don't know if he used those exact words. That may be my interpretation, Senator, but I do recall him saying that he intended to abide by whatever recommendations would be made by the staff attorneys.

Senator D'AMATO. Thank you. Would you continue reading page 132, go to line 8.

Mr. ICKES. Where do you want me to pick up, sir?

Senator D'AMATO. Line 8. Follow with me.

Toward the latter part of the meeting, he brought up that he was considering recusing himself in connection with this matter and as I recall, it was because he, as the acting chairman or the President, would ultimately have to determine whether or not to implement a recommendation, if any, made by the general counsel's office with respect to this investigation.

Whether or not.

Mr. ICKES. I don't think that's inconsistent with what I said, Senator D'Amato.

Senator D'AMATO. OK. That's fine.

Mr. Stephanopoulos, I'm going to ask you, and this is important because it's your testimony under oath before Congress—is it your testimony now that you never suggested that Mr. Steiner or Mr. Altman find a way to fire or get rid of Mr. Stephens?

Mr. STEPHANOPOULOS. I don't remember anything like that at all, sir.

Senator D'AMATO. That's not——

Mr. STEPHANOPOULOS. I've testified to that 100 times.

Senator D'AMATO. Mr. Chairman, this is not responsive, and we have continued now on this line.

Let me put it this way, Mr. Stephanopoulos. We're talking about a pretty important matter. We're talking about a call that you admit that you were irritated about and, to be quite candid, I could understand that. I could understand the perspective that someone who is a partisan in the political arena and who can be suspect as it relates to his independence is now placed in a very sensitive position. I understand that. So I understand your feelings as it relates to that. But listen to the testimony as it relates to the diary of Josh Steiner. He says, and I'm paraphrasing, that these guys even wanted us to fire him, and I told George. I persuaded him that it's crazy, no.

Now, I want to ask you, is it your testimony under oath, and I tell you there's no way you could forget this, one way or the other—excuse me, in my opinion, in my opinion, this is not the kind of thing that someone could forget given the incredible publicity that followed within a relatively short period of time. Time magazine, stories following. We're not talking about an incident that took place or getting rid of somebody or not getting rid of somebody. We're not talking about nuances.

The question is did you ask Mr. Steiner—or no—Mr. Altman to find a way to fire or get rid of Mr. Stephens? Yes or no.

Mr. STEPHANOPOULOS. Senator, what happened in that conversation is what I said in my testimony, what I've said hundreds of times. I will repeat it again——

Senator D'AMATO. I don't want you to repeat——

Mr. STEPHANOPOULOS. I've answered your questions time and time again, Senator.

Senator KERRY. Mr. Chairman, it is absolutely unfair for a U. S. Senator to cut off a witness simply because he doesn't like his answer.

Senator D'AMATO. That's not the case, Senator.

Senator KERRY. Yes, it is the case.

Senator D'AMATO. No, it's not. It is because the answer has been nonresponsive.

Senator KERRY. I beg to differ with the Senator, politely with the Senator.

Senator D'AMATO. Then I'm making the point that something that's so critical——

Senator KERRY. Mr. Chairman, I'm trying to make a point.

Senator D'AMATO. You're doing it on my time.

Senator KERRY. Mr. Stephanopoulos—and we can go back to the record. On several occasions, Mr. Stephanopoulos has said in answer to the question—you said is it true or isn't it, did you or didn't you, with a huge buildup with all of the negatives, and he has said, Senator, I don't remember. That's his answer. Now, no matter how many ways you phrase it and no matter how bad you try to make it sound, he doesn't remember. And I think it's unfair when he says I don't remember to simply cut him off and rephrase all the negatives.

The CHAIRMAN. Well, what is your answer? Is Senator Kerry correct? Are you saying that you don't remember one way or the other and that's your testimony or can you give a direct answer?

Mr. STEPHANOPOULOS. First of all, Senator, I think that is a direct answer.

The CHAIRMAN. No, I mean an answer that goes beyond the fact. Is there any other answer you can give?

Mr. STEPHANOPOULOS. I can't speak to Mr. Steiner's diary. I don't know why he wrote what he wrote in his diary. I can testify to the conversation as I have. I asked him how Jay Stephens came to be hired. I was angry in that conversation. I concede that. Once he told me how Jay Stephens came to be hired by an independent board, that was the end of the conversation. I never directed anyone at the Treasury Department or the RTC to interfere with this investigation in any way, and that a conclusion is corroborated by the Special Counsel Mr. Fiske and the Office of Government Ethics.

The CHAIRMAN. May I ask you this?

Mr. STEPHANOPOULOS. Absolutely.

The CHAIRMAN. Just so we can be clear and take some of the heat out of it for a moment and if you will permit me.

Senator D'AMATO. Certainly.

The CHAIRMAN. Let's take the word "directive" out of the answer. Did you say to anybody that Stephens should be fired?

Mr. STEPHANOPOULOS. I said that Stephens had a terrible conflict of interest. I don't remember saying anything like that at all.

The CHAIRMAN. So you have no memory whatsoever of saying that he should be fired?

Mr. STEPHANOPOULOS. No, I do not, sir.

Senator D'AMATO. Mr. Chairman, I hope my time——

The CHAIRMAN. Time is being restored right now.

Senator D'AMATO. And I appreciate that.

I'm going to make a statement on my time. I don't think it's conceivable given the history—and I'm not going to recount it—of the events, given the diary that has been presented, given the phone call that was made, given with some particularity the manner in which Steiner says, and he's talking about colleagues and friends of his—"George suggested to me we needed to find a way to get rid of him" and "persuaded George to fire him would be incredibly stupid and improper," very precise.

And now when we attempt to get from the witness an answer as to yes or no, did he suggest that Mr. Steiner or Mr. Altman find a way to fire or get rid of him, he says I have no recollection. That is an artful way. That's that artful dodging again, an artful dodge. This is my opinion. I understand it's a graceful dodge, but I don't think it's so graceful. I think the American people and others in this Committee really have an understanding of what's going on.

This is an attempt to keep from answering a question that anyone, given the circumstances and the import of that whole situation, couldn't help but remember. And not to confuse matters, this Senator is absolutely convinced that the witness is involved, once again, in a graceful dodge that is not too graceful.

Thank you, Mr. Chairman.

Senator MACK. Mr. Chairman——

The CHAIRMAN. Just one moment. I've got both Senator Sarbanes asking to speak and——

Senator MACK. Mr. Chairman——

The CHAIRMAN. I'll come back in a minute but we're going to rotate here and I'll call on you as well.

Senator MACK. I just wanted to make a point that there are a lot of us that are waiting here that have not participated. If we don't go back to trying to strictly stay to the time, those of us who are being——

The CHAIRMAN. I couldn't agree with you more.

Senator MACK. It seems to me if they want to raise that point, when it's their time they ought to raise it.

Senator SARBANES. It is our time now. Senator D'Amato's time just expired and the time comes to this side. Who is recognized on this——

Senator KERRY. Before the time comes to our side——[Laughter.]

The CHAIRMAN. Just one moment.

Senator KERRY. Excuse me.

The CHAIRMAN. Senator Kerry, just a moment please.

Senator KERRY. I thought the witness deserved an opportunity to answer. After all——

Senator MACK. That was a statement.

Senator D'AMATO. I didn't ask a question. I made a statement. I did not ask a question. I said this is my opinion.

Senator SARBANES. Mr. Chairman, if I may make the point.

The CHAIRMAN. Let me just indicate that the witnesses have been at the table for a long time. And they've asked to have a 10-minute pause here so they can refresh themselves. I think that's a reasonable request.

Mr. STEPHANOPOULOS. May I respond to the Senator.

The CHAIRMAN. Once I finish. Senator Sarbanes, you've asked to be recognized but the witnesses have asked if they can have a break here. I want to accommodate that. I think it's reasonable.

Senator SARBANES. I want to be—I just want to make the point that a response by a witness that "I do not remember," "I do not recall" is a direct answer to the question. Now, you may not accept that answer if you're the questioner. Others may accept that answer, others may find it creditable that the witness would not recall or would not remember.

Senator D'AMATO. My colleague is correct.

Senator SARBANES. And the fact that it's not the answer you're seeking I don't think makes it not a response to your question.

Senator D'AMATO. Well, that's why I said I found it difficult.

Senator SARBANES. Secondly, this line of questioning gives incredible credence to the Steiner diary which I must say to you I have some difficulty in doing. I mean, I think to some extent this is a work of art, so to speak.

Senator MACK. But, Mr. Chairman, could I get some time and just——

Senator SARBANES. I just want to register those two points with respect to the statements and the line of questioning that we just followed, but I don't—I mean, you may not accept the answer but it is an answer and it is a direct answer.

The CHAIRMAN. Well, I've got several Senators seeking recognition on both sides. I've got Senator Kerry, Senator Shelby, Senator Mack. Gentlemen, please. They've asked for a break at this point and I think they deserve one. We're not going to adjourn abruptly here. Everybody is going to have another chance, so whatever anyone wants to raise, they're going to have the opportunity to do so.

Senator DOMENICI. On a lighter note, could I just tell you what 5 people outside are doing the pooling for television said to me a while ago? I've been joking with them that the longer we're here, the more money they make. And so I said, are you all pooling and one of them said, I'm pooling for 4:00 a.m.

The CHAIRMAN. Well, Committee stands in recess for 10 minutes.

Mr. STEPHANOPOULOS. Chairman, may I simply respond?

The CHAIRMAN. Mr. Stephanopoulos, I'll be happy to call on you when we come back. I don't think the question was presented to you and we'll start this whole thing all over again.

Let's take a 10-minute recess.

[Recess.]

The CHAIRMAN. The Committee will resume and we'll pick up where we left off. Senator Sarbanes is going to finish his time period and then we'll rotate back to the other side.

Senator Sarbanes.

Senator SARBANES. Mr. Chairman, I'd used a little bit of my time before I'm not going to hopefully use it all in this round because I do think a lot of the questioning has become very repetitive, and I know we have, as I understand it, we have yet another witness this evening if that—Mr. Nussbaum will be coming in.

The CHAIRMAN. Yes.

Senator SARBANES. And I want not to use my time in an effort to be able to move on, otherwise we're going to be here until 3:00 or 4:00 in the morning. I do think, though, at the outset that if he wishes, I should yield some to Mr. Stephanopoulos.

Mr. STEPHANOPOULOS. Thirty seconds, sir, just very briefly.

Senator SARBANES. Whatever time you need. I know you were seeking before to say something. I think you ought to have that opportunity to do so.

Mr. STEPHANOPOULOS. Just very briefly for the record. I mean, there was a lot made of the diaries, you did point out, but when Mr. Steiner was asked under oath about this exact same sentence, his reply under oath to this Committee was I don't recall him saying that, no, on the matters that Mr. D'Amato was questioning me about.

That was all I need to say. I don't need to take up any more time.

Senator SARBANES. That's a very important point. I'm glad you had the opportunity to put that into the record.

Could I ask the Chairman, is it the intention that once we complete this panel, which I take it we hope will be in the not too distant future, we then will go to Mr. Nussbaum and we will stay with Mr. Nussbaum until we finish, in other words, however late that goes this evening?

The CHAIRMAN. That's right and I've discussed that with Senator D'Amato who has discussed that with his side of the aisle and that is our agreed-upon operating plan. When we finish with this panel,

we'll probably take a brief recess, or we may not, but in any event Mr. Nussbaum will come on and we will stay with him until we finish tonight.

Senator SARBANES. Mr. Chairman, I won't use the balance of my time. I don't know if any colleague has a point they want to make at this point or whether they want to wait their turn with respect to the balance of my time.

Senator DODD. Who's next?

The CHAIRMAN. Senator Kerry was actually, I think, next in the order on our side, but——

Senator SARBANES. Do we go back to that side?

The CHAIRMAN. We will go back to this side unless someone wants to use the balance of your time.

Senator KERRY. Mr. Chairman, I'd be happy to use the balance of the time, I'm just afraid I won't get through the point I want to make——

Senator SHELBY. Mr. Chairman, I wonder if the Senator from Maryland would give me 20 seconds of his time.

Senator SARBANES. Certainly, certainly.

Senator SHELBY. It was pointed out earlier before we had a break, the Senator from Maryland said something about the diaries, you know. They've been in vogue up here and in evidence and been talked about for all week and maybe before then. I think they are central as to what was going on regarding Roger Altman, regarding this whole thing. I think they're very important. They have a lot of probative value, a lot of probative value.

The CHAIRMAN. Thank you, Senator Shelby.

Senator SARBANES. Mr. Chairman, I made the point earlier, I don't know if Senator Shelby was here and I don't altogether agree with that. I mean, I don't know that the——

Senator SHELBY. My response was to your comment.

Senator SARBANES. Oh, all right. I didn't realize you were here. I want to make it very clear. I mean, I'm not sure how much probative value the diaries ought to be given and I think there is a certain flair, freelance quality to these diaries. In fact, I wrote earlier that it—that, well, the author may be given to dramatizing, I think that might be a kind way, a kind way to put it.

Mr. Chairman——

Senator SHELBY. I think the author was dramatizing trying to explain them and he didn't do it.

Senator SARBANES. I'll yield back the balance of my time and let you go back to the other side.

The CHAIRMAN. Very good, Senator Bond.

Senator BOND. Thank you, Mr. Chairman. There were a few comments, seems like minutes, maybe it was hours ago about the Fiske Report that brought to my mind that when we had the session on Friday we found that there were a number of areas where it appeared, at least to me and to several others, that maybe the investigations by Mr. Fiske had not been as complete as needed. I asked specifically that the FBI provide us any other interviews that they had conducted, particularly as it related to Little Rock, and they assured us they would do so. I have not seen any response, and I thought perhaps if Counsel hasn't received them that it might be helpful to urge them to comply with that request.

The CHAIRMAN. I'll make an inquiry, but when you say "Little Rock," what is the reference you're making?

Senator BOND. We were asking questions about who they interviewed in the U.S. Attorney's office. They had provided us with one interview with an Assistant U.S. Attorney and that interview was, frankly, very weak because the person interviewed had the wrong day, had made several suppositions that really raised more questions than it answered.

The CHAIRMAN. Let me check and see. I think we have an answer on that, but I want to check with Counsel who is away at the moment and provide that answer. Let's put that issue aside for the moment.

Senator BOND. I was going to try, Mr. Podesta, to go back to what we were discussing several days ago when I last talked with you.

Mr. PODESTA. It feels like that.

Senator BOND. Mr. Todd Stern reports to you at the White House; is that correct?

Mr. PODESTA. He does.

Senator BOND. We have, in the documents submitted to us, Exhibit X 000075 which was produced by Mr. Stern, Senate Banking Committee hearing "to-do" list. And in this it's pretty clear that, at least, Mr. Stern wanted Mr. Altman to focus and here's just a couple of bullets. I'm just going to read excerpts.

Mr. PODESTA. Could I get a copy, Senator?

Senator BOND. Yes, there's a set. "Altman's failure to recuse himself, the nature of the RTC's investigation of Madison, is investigation continuing, what is going on, question mark. Criminal referral to Justice, what were circumstances, is RTC going to pursue any civil relief," skipping down, "were Madison resources directed into other business ventures and principals in the Clinton campaign funds." Next bullet, "chronology of RTC investigation of Madison, who did what, when, and why were referrals made to Justice, what if anything is going on now, et cetera."

It even goes on to give a little political flavor. It said "is Treasury working on questions for committee Dems, line up a Senator or two" and they referenced a couple of Senators "have a page or two of background plus questions for the counterpunches."

Do you happen to know those counterpunches? Do you have any of those counterpunches available for us that you might share with us?

Seriously, well, I assume if you had counterpunches, you'd show them to us, but do you know, was this matter followed up on by Mr. Stern? Do you know what was done with it, was it used in telephone briefings, oral briefings?

Mr. PODESTA. Senator, let me testify first to my knowledge which is that while I saw this document in my deposition, I said that I may have received it. It might have been the kind of thing I got, but I wasn't familiar with it. I would point out that with regard to the bullets you read, it says "prepare witness" says next to that "is Mike Levy, the Treasury person." I did not talk to Mr. Levy about any of the items on this list. I did mention to Mr. Levy that Mr. Altman would be—would need to be prepared to answer ques-



tions about recusal. I don't know whether Mr. Stern did, I do not believe he did, but I'm not—I can't testify for him.

Senator BOND. This shows that, at least, Mr. Stern believed that Mr. Altman should be prepared to address criminal referral to Justice, what the circumstances were and those other items. So this was something the White House was focusing on and I assume that when Mr. Stern prepares a memo like this, he does something with it.

Mr. PODESTA. Well, I—

Senator BOND. Is that logical to assume?

Mr. PODESTA. I think it would be logical to assume with regard to the bottom couple of points which were the ones in our office relating to counterpunches. Again, I testified earlier that we wanted to put the hearing in a broader context. I think that's what—it's not my word, but I think that's what he was referring to, to try to put Madison in the context of the overall S&L cleanup and our Administration's—

Senator BOND. My point is the White House, your associate, Mr. Stern, was focusing on the criminal referrals and you forecast the questions that we were going to ask. I mean, if this had been fully utilized in the briefing, Mr. Altman would have been ready.

Now, following up on the questions, Senator Bryan asked some questions, and Senator Gramm did. You said that "we had a duty and he had a duty to correct the record. I was tasked to follow up." You said, "I assumed his letter had been sufficient." I went back and read through these four letters and this was the letter of March 2 and it said in the third paragraph, "but I have learned today of two conversations which did take place between Treasury and White House personnel on this matter. My information is that both related to the handling of press inquiries."

In your view, is that an adequate follow up to the question that I asked, which was who told the White House of the criminal referrals?

Mr. PODESTA. Senator, I would have written a different letter. I think that you asked very specific questions. We were concerned about that. We wanted, we wanted that record to be corrected. What I said earlier was that I thought in the context of what was going on that the information that you had requested was out there. I assumed it was in this letter. I think if this letter was the only thing that you had received without context or anything else, I think it's, you know—

The CHAIRMAN. You think what—I'm sorry, what did you say? I didn't hear that last word.

Mr. PODESTA. I think that it would—you'd need to connect the dots, going back to your questions and looking at those two meetings.

The CHAIRMAN. But that's not what he asked you, he asked you whether the letter—

Senator BOND. Did that letter answer the question I asked at the February 24th hearing?

Mr. PODESTA. I think you have to go back to your questions to understand.

Senator BOND. My question was, who advised the White House of the criminal referrals?

Mr. PODESTA. And in my view, the responsive answer would have been the meeting on the 29th and——

Senator BOND. The answer should have been Jean Hanson. If you believe Ms. Hanson, it was Jean Hanson at Mr. Altman's direction. If you believe Mr. Altman, it was Jean Hanson on her own. The problem——

Mr. PODESTA. Yes.

Senator BOND [continuing]. The problem, Mr. Chairman, is that throughout this we were not able to get a straight answer from Mr. Altman. Mr. Podesta was tasked to make sure this was done. I know Mr. Podesta from having worked with him on the Agriculture Committee. He's very thorough. When he says he's going to follow up he normally does.

But I have to tell you, Mr. Podesta, that the failure to answer the simple question which I think would have been devastating had it been properly answered, the failure to follow up on this tells me too much about the attitude of Mr. Altman and perhaps the White House.

Mr. PODESTA. Well, Senator, I think I answered earlier with regard to the White House which is that we brought this to Mr. Altman's attention. I understood the next day that a letter had been sent and the Chairman had been called. I did not see the text of the letter. The following day there were newspaper stories that noted Ms. Hanson, noted the criminal referrals. I thought this matter had been taken care of. When I finally saw the letter, which was sometime later—I think, now I take your point.

Senator BOND. Mr. Podesta, you're better than that. I've seen you follow up and you do better work than that.

Senator KERRY. The Senator may also remember that the entire process was interrupted by the Grand Jury on the 5th of March I think it was.

The CHAIRMAN. The record should——

Senator BOND. The dog ate my homework doesn't get it.

The CHAIRMAN. The record should be clear that they got the proper information to The Washington Post, that's been the testimony here today. They just didn't get the proper information to us; isn't that correct, Mr. Podesta?

Mr. PODESTA. I think that's a fair statement.

The CHAIRMAN. Thank you.

Senator DODD. I'm prepared to ask a question but I think Senator Kerry——

The CHAIRMAN. I think Senator Kerry has been waiting and is next in the line of march here.

Senator KERRY. Thank you, Mr. Chairman.

I'd like to use my time to try and clarify where we were earlier, particularly with respect to my friend from New Mexico, and see if he and I can't get a better understanding here. What disturbs me a little bit is that there's a process where some theories are being propounded, and that's fine. It's all fair game. And questions are being asked to support the theory but the questions and the theory are not based on the evidence, on the full evidence, and so you wind up leaving the impression with the public that there's some line or avenue here that is not in fact documented by where we've been.

Now, I share with the Senator from New Mexico, and he and I have talked about it, some questions about the recusal question—what was going on, what was in somebody's head? But the Senator has asked a question and there was a heated exchange toward the end here based on the notion that somehow Mr. Ickes and his attorneys have cooked up this concept of the notes which with the arrival of my good friend have been usurped over here. I just want to go into that for a minute, because I think you have to look at this in its full context, both on the facts as they are presented with respect to who did what and also on reality, just sort of a common-sense reality that we're called on to apply to it. And we went through this earlier, I may not have been as clear as I should have been, but on this question of Mr. Ickes' testimony and what he knew with respect to the tolling agreement and where things were going to go. The fact is that Mr. Altman has testified differently. A number of other witnesses—let me be very specific here. Ms. Kulka and perhaps she's the most important of all because Ms. Kulka ran the investigation, Ms. Kulka we have all agreed came to us as somebody that we judged was of high integrity, independent, and didn't have any ox in this except wanting to do her job as a professional.

Ms. Kulka said to us it was impossible—these are her words—it was impossible for anybody to understand, for Mr. Altman to transfer information, that we couldn't finish our investigation in time because that was not the fact. Now I know none of you disagree. That was her testimony. So we have her testimony saying it's impossible. We have Mr. Ryan saying impossible, couldn't have done it. Now that's the state of the evidence.

But in addition to that state of the evidence, that you could not have transferred this information and, therefore, Mr. Ickes must have been mistaken in whatever he interpreted, you now have contemporaneous notes of Mr. Ickes himself.

Now, Mr. Ickes, let me ask you, you are under oath. I mean these notes were made at the same time as the meeting?

Mr. ICKES. Are you looking at typewritten transcript, Senator?

Senator KERRY. I'm looking at the typewritten transcription, but the handwritten notes dated 2/2/94 were in fact made on 2/2/94?

Mr. ICKES. Yes, they were, Senator Kerry.

Senator KERRY. Let me suggest, if my friend from New Mexico was indeed concocting up a great conspiracy, you, at least, think the lawyers were smart enough to cover the bases and they would come here with notes that also mentioned the recusal. But it doesn't mention the recusal. At least to this Senator, this lends sort of some authenticity to the notion that this represented contemporaneous notes at least as to the things that it covers.

Now I go one step further than that. Another witness who testified here, Ms. Hanson, specifically said to us, very early on in the process of depositions, that she prepared the talking points for Mr. Altman. Mr. Ickes has testified that those talking points were read and Mr. Altman used them and looked down at his sheet of paper and Ms. Hanson, who was at the meeting specifically said to us he read through the items. At one point I expanded on a piece of the discussion on the statute of limitations but as Mr. Altman was reading through the talking points.

Now, I say to my friend from New Mexico, you then go to the talking points. The talking points say specifically it is not certain when the analysis will be completed, but it will be before February 28th.

So when my friend offers a question based on the facts, I think it ought to take all the facts into account. Now, you may want to test his memory beyond that and that is certainly fair, but what did Mr. Ickes' notes say, "contemporaneous"? They say that there's an A, B, C—"A, last date for RTC to reach conclusion, any claim for potential misconduct or fraud re: any other parties," or "B, commence litigation to preserve claim," that is, as it's called, a protective suit, and "C, a tolling agreement."

Now that brings us to the political reality issue that I raise. The Senator's been here a long time, he knows the politics of this place better than I do. Senator D'Amato was in the middle of a very visible, well covered and clever countdown. It is—

Senator DOMENICI. Clever in the good sense of the word.

Senator KERRY. I didn't characterize it in any way. You can interpret "clever." And if I was being pejorative, I might have found a different New York word for it. The point is that in the political climate with day after day of front-page headlines, with this incredible countdown going on, could the Senator or anybody really believe that if Ms. Kulka came and said we're not ready, we've got to file a protective suit or we're going to have—we need a tolling agreement, that the White House could conceivably have withstood the political pressure and not have signed a tolling agreement?

Now you have to disbelieve Ms. Kulka completely and Mr. Ryan and the independence they asserted here to believe that they would not have filed a protective suit or have asked for the tolling agreement. I respectfully suggest to my colleague that the factual situation he drew is, therefore, number one, incorrect. Number two, it simply could not have happened because of Ms. Kulka. Number three, it simply couldn't have happened because of the politics and the reality of the public scrutiny of any tolling request and the situation. The fourth reality is the President understood this and what did he do, he previously had appointed a Special Counsel. He subsequently signed the statute of limitations and effectively rendered moot any of these other issues.

So all I want to do with my friends, you know, we're tired, we've been here a long time, we've done this I think with mostly the dignity that it ought to have and I think we all want to try to continue that. But I would simply say that we've got to deal with the facts and we probably shouldn't even be arguing them now. We should simply be gathering them and then sit down amongst ourselves and try to deal with them rather than argue the theory first and then chastise the witness because they don't give you the answer you want to fit the theory.

Senator SARBANES. Senator Kerry, your time has expired and, Senator D'Amato, we'll go over to your side—

Senator D'AMATO. Senator Domenici for a moment and then I know Senator Hatch is going to follow up.

Senator DOMENICI. Senator Kerry, first of all, I appreciate whatever knowledge you have attributed to me about this place or politics. But I want to respond by telling you that Mr. Altman's Special

Assistant, Mr. Nye, was also deposed. My point is that Roger Altman remained in a very serious decisionmaking position regardless of what's said about de facto recusal and everything else. And let me tell you that Mr. Nye agrees with that in spite of Ms. Kulka's statements about the case. I'm just going to read two questions and two answers in that regard.

*Question:* What did Ms. Kulka say about the imperfections of the information at that point?

*Answer:* Just that she wouldn't have enough time between—her feeling was that she wouldn't have enough time between then, the date of the meeting, and the 28th, the statute of limitations expiration, to make as informed a decision as she would need to make—in her opinion, that wouldn't be enough time to sort of go through all of these mountains of documents, and so forth, or for her staff to do so, and that ultimately she would have to be making a decision with the best information possible at the time.

Then I want to skip right down one line and say:

*Question:* Did Mr. Altman or Ms. Hanson offer any advice or discuss those issues with Ms. Kulka?

*Answer:* Only—it wasn't so much a response as a sort of informing him.

And now "him" is in quotes meaning Roger Altman. So "informing him" of the situation and making him realize that the recommendation would be coming to him.

Did you hear the last part, Senator?

Senator KERRY. Yes, I did.

Senator DOMENICI. The recommendation would be coming to him. On the question of whether or not to file one of these early suits, Roger Altman would be the decisionmaker. That's what this question and answer from Nye's deposition indicates.

Senator KERRY. Senator, if I could just answer, you and I agree as to that. That is not—and I said at the outset of my comments, that there is certainly a question and I've raised that issue as much as anybody here, about what is the meaning of "a de facto recusal" and what was happening. The only thing that I'm asserting with respect to this other issue is that the evidence is different and finally Ms. Kulka, in fact, contradicts what Mr. Nye said so we have to sort that out.

Senator D'AMATO. Mr. Chairman.

Senator SARBANES. Yes.

Senator D'AMATO. Senator Hatch, please.

Senator DOMENICI. Thank you, Senator, for yielding to me.

Senator HATCH. Thank you. I only have a couple questions. I'd like to ask a couple questions that put into context some of my earlier questions of Mr. Stephanopoulos. I'm going to ask them to you Mr. Ickes and see where we go.

It's fair to say, isn't it, that you and other senior White House officials were, to use your term, "focusing" on the problem of the RTC's hiring of Jay Stephens. You said "I think that those of us who were focusing on this including myself were very concerned," so that's a fair statement, isn't it?

Mr. ICKES. It's a fair statement because of the—as it's been described, I think, in detail by Mr. Stephanopoulos, his highly partisan—

Senator HATCH. I understand.

Mr. ICKES [continuing]. Outspoken attitude against the President.

Senator HATCH. I understand. What I'm asking is—that's a fair statement. I understand there were great expressions of concern around the White House by a number of different people and White House officials and that some of the officials raised the question of how to have the RTC get rid of Jay Stephens.

Now let me quote you again. And I think that's a fair—

Mr. STEPHANOPOULOS. Senator, I was not a party to any conversation of that kind.

Senator HATCH. I didn't say you were, Mr. Stephanopoulos, I don't know. But what Mr. Ickes said in his deposition was "there were certainly great expressions of concern around the White House by a number of different people."

Mr. ICKES. But, Senator, in fairness, that doesn't indicate that anybody was trying to get rid of him. There was concern about his—

Senator HATCH. I understand, that's all I'm asking.

Mr. ICKES. OK. I just want to make that clear.

Senator HATCH. Then you were asked: "Do you recall there being discussions that someone ought to find out whether if the Stephens hiring was a done deal in terms of them being retained or whether something was in play and something could be done?"

Your answer was: "It was my impression that nothing could be done, that it was not in play. As I testified before, I'm sure there were people who raised that as a question."

Do you remember making that statement?

Mr. ICKES. Yes. Are you reading from my Senate deposition?

Senator HATCH. Yes.

Mr. ICKES. Could you refer me to the page, Senator?

Senator HATCH. I think it's page 178. Let me just see I've got it right here. Page 178, lines 3 through 9.

Mr. ICKES. Bear with me one moment, please.

Senator HATCH. Sure.

[Witness reviewed the document.]

Mr. ICKES. I'm sorry, would you repeat?

Senator HATCH. Did I read that correctly?

Mr. ICKES. Yes, you read that correctly.

Senator HATCH. So that's what you said?

Mr. ICKES. That's what I said.

Senator HATCH. And that's true?

Senator D'AMATO. Pardon me? Senator has an inquiry?

Senator BENNETT. I'm just asking if we cannot run the time while the witness is reading and nothing's—

Senator D'AMATO. I think the Chair will allow time.

We've been very flexible.

Senator SARBANES. The fact of the matter is we've not been gaveling people off as soon as it goes red and I'm sure the amount of time by which it runs over will more than compensate for the time that he's been looking at his paper.

Senator HATCH. I have no gripes. I think Chairman Riegle and others have been very fair. OK.

Mr. ICKES. But I think, Senator, just so the record is clear, I said in here on line 9, "I don't remember any specific conversations about it or any details. I would be surprised if there weren't such discussions or at least questions."

Senator HATCH. OK. That's fair.

Mr. ICKES. But that doesn't indicate that I was party to any of those or knew about them.

Senator HATCH. I'm just trying to establish this in context. You also spoke with President Clinton in person about the RTC's hiring of Jay Stevens; right?

Mr. ICKES. About the what, sir?

Senator HATCH. About the RTC's hiring of Jay Stephens.

Mr. ICKES. At some point I recall that I did speak to him about it.

Senator HATCH. It's fair to say, isn't it, that the President was gravely concerned about the fact that the RTC had hired Jay Stephens?

Mr. ICKES. He expressed concern. A number of us expressed concern, Senator.

Senator HATCH. But I said "gravely concerned," I'm paraphrasing you again and I think we're, in paraphrasing, I think it was at a time when you and the President were alone and I think it's on page 245, lines 10 to 17.

Mr. ICKES. 245?

Senator HATCH. Yes, lines 10 to 17. Maybe you could read those to us.

Mr. ICKES. Yes, you are reading correctly.

Senator HATCH. "What did you say to him, President Clinton, and what did he say to you?" that was the question. And then your answer was, "I don't recall the exact words. The gist of it was he expressed grave concern about the fact that Mr. Stephens' firm and we understood they had been retained and we understood Mr. Stephens in particular was going to be working with the RTC on that."

Mr. ICKES. You're reading correctly.

Senator HATCH. OK. And that's correct?

Mr. ICKES. Yes.

Senator HATCH. OK. That's all I have. Thank you.

Senator SARBANES. Thank you very much, Senator Hatch.

Mr. ICKES. But I just want to clarify, Senator Hatch, that the President never asked me to do anything about it and I never did anything about it.

Senator HATCH. I didn't ask you, you know. That's fine. That's a good clarification.

Senator SARBANES. Senator Dodd.

Senator DODD. Thank you very much, Mr. Chairman.

Mr. Chairman, I just want to point out I can't recall now which of our colleagues inquired of Mr. Ickes about his deposition—I'm referring to page 132 of his deposition, regarding the rationale for Mr. Altman's decision to recuse himself—and went down to part of that page, line 14. I thought the question of that should be included in the record if we're going to keep a full one, because then the question was did he go on to explain at that time what he thought the reasons for recusing himself were.

"Answer."—Mr. Ickes—"there were questions along that line, both from myself, Mr. Nussbaum and I think others to determine the basis and as I recall, the gist of his basis was that he was—had a long and well-known friendship with the President and that he was considering recusing himself to eliminate any possible conflict

or appearance of conflict." It seems to me that is very important if you are going to have a full transcript of what the conversation was at that time, so you get a full picture.

Now, Mr. Chairman, a lot has been made of these Steiner diaries and some are relying on them more than others.

Mr. Podesta, on the last page of your opening statement, the top paragraph, you say that "in the several days following Mr. Altman's February 24th testimony, I spoke by telephone to Mr. Steiner on three or four occasions." Then you go on to say "on February 25th Mr. Steiner told me that Mr. Altman had recused himself from Madison matters."

Disregarding that we have that particular line and considering the Steiner diaries in which Mr. Steiner says gracefully dodged the question or words to that effect. Gracefully ducked the question; much has been made of that. Now you had by your own testimony here in your opening remarks—and, by the way, he wrote that entry on the 27th of February so, it's contemporaneous with your conversations with Mr. Steiner on the 24th and the 25th and possibly beyond that.

Now, are you familiar with the Steiner diary description of Mr. Altman's handling of the February 24th testimony?

Mr. PODESTA. I know he used that term.

Senator DODD. He used that term. Now, in your conversations with Mr. Steiner, I presume you talked about the February 24th testimony?

Mr. PODESTA. Senator, to the best of my recollection we had two conversations about recusal——

Senator SARBANES. Mr. Podesta, if you could pull that mike closer to you.

Senator DODD. I'm looking at your opening statement today "in several days following Mr. Altman's February 24th hearing, I spoke by telephone to Mr. Steiner on three or four occasions."

Mr. PODESTA. Correct.

Senator DODD. Maybe—I'm sorry, I jumped ahead.

During those conversations, did Mr. Steiner characterize for you how Mr. Altman handled the testimony before this Committee?

Mr. PODESTA. No, Senator, no, he did not.

Senator DODD. Did you ask him at any point how he would characterize Mr. Altman's testimony?

Mr. PODESTA. I think those conversations were very brief. I don't believe I asked him how he would characterize the testimony. He informed me of the Dennis Foreman conversation on the February—on February 1st. He informed me that Mr. Altman was thinking of recusing himself, that conversation occurred on February 25th followed very shortly by a call that said that he had recused himself.

Senator DODD. I'm curious about this——

Mr. PODESTA. We did not discuss the substance of Mr. Altman's testimony. I had that conversation with Mr. Altman and he never characterized that to me.

Senator DODD. I find that somewhat curious. Now you've received this hot line phone call from Mr. Eggleston outside of the Committee room because in Mr. Eggleston's opinion, Mr. Altman has just made a mistake; is that not true?



Mr. PODESTA. I don't believe——

Senator DODD. Someone in your office did, not you.

Mr. PODESTA. I talked to Mr. Eggleston on the 25th.

Senator DODD. On the 25th and so there is some concern about this testimony.

Mr. PODESTA. Correct.

Senator DODD. Mr. Steiner, of course, works for Mr. Altman.

Mr. PODESTA. No, he works for Secretary Bentsen, but I think the point is fair.

Senator DODD. The point I'm trying to get at is if we're concerned about this and here is someone who can maybe shed some light on what Mr. Altman's testimony was, what it should have been, why wouldn't you have raised the question with Mr. Steiner about the content of Mr. Altman's testimony?

Mr. PODESTA. I may have, Senator, but I don't recall that. I think we had, as I said, a series of very brief information telephone calls.

Senator DODD. Now, that hearing was televised on C-SPAN I believe, and I presume it was being carried live, but I don't know that. Was it being carried live? You had the Chairman of the Federal Reserve Board and others, the Secretary of the Treasury. Did you have—were you monitoring the hearing live?

Mr. PODESTA. I was not.

Senator DODD. Was anyone in the White House monitoring that hearing live?

Mr. PODESTA. No, I don't think so.

Senator DODD. You don't know. OK. Now, did you agree with Mr. Eggleston when he called and I gather said gee—what did he tell you in that phone conversation? When did he call or what do you know that he may have said, not to you but to your office? I'm sorry.

Mr. PODESTA. Why don't I testify to what I know which is the next day I think. He came to me and said Mr. Altman was asked to describe the meeting on February 2nd. He described it, he did not say that the topic of recusal had come up. He was concerned about that.

Senator DODD. Who is this saying this?

Mr. PODESTA. Mr. Eggleston said that to me.

Senator DODD. Did he tell you that he felt that Mr. Altman had not answered candidly and honestly to this Committee?

Mr. PODESTA. He was concerned that that was not—I'm not sure I would use the term "candid and honest." I think he was concerned that the full information was not provided to the Committee.

Senator DODD. Had you read the testimony, by the way, the full transcript of the hearing at this point?

Mr. PODESTA. No, I had not.

Senator DODD. Had Mr. Eggleston read the transcript?

Mr. PODESTA. No, he had not.

Senator DODD. Had he talked with Mr. Altman?

Mr. PODESTA. No, not to the best of my knowledge.

Senator DODD. So in a subsequent conversation now with Mr. Altman, confronted with the information that he should have included that, as I understood your testimony a while ago to one of our colleagues here, Mr. Altman challenged that in fact he had not

been forthcoming because he interpreted the questions differently than Mr. Eggleston had.

Mr. PODESTA. I wouldn't put that gloss on it. I think that Mr. Altman—when I raised the—specifically what I think I was referring to was Senator Bond's question and I read or paraphrased, I think I actually read it to him. He said that's correct, that he had no knowledge of the meetings and I believed him.

Senator DODD. All right. My time is up Mr. Chairman, may I ask one clarification question. It goes back to a moment ago and again comes back to the issue that was raised over the conflicting testimony between Ms. Hanson and Mr. Altman regarding the September 29th meeting. I think the record, if it's going to be consistent, should reflect that it's Ms. Hanson's recollection that she went to that meeting under the direction of Mr. Altman. Mr. Altman's testimony is that that was not the case, that he does not recall sending her there. The statements are being made that there you have a conflict between two people and I think to draw the conclusion that Mr. Altman should have mentioned the 29th meeting when pursuant to his own testimony he doesn't recall that at all and therefore would not have necessarily brought it up on the 24th, if you're to believe him that he did not recall that. I just want to make that point.

Senator SARBANES. Fine.

Senator MACK.

Senator MACK. Thank you, Senator Sarbanes.

Mr. Lindsey, I'd like to address a question to you.

Mr. LINDSEY. Yes, sir.

Senator MACK. And it's going to cover a period of time from basically September 30th to October 4th and 7th.

Mr. LINDSEY. OK.

Senator MACK. But before I run through kind of a series of points, you had a phone conversation with Jim Lyons on October 4th, I think?

Mr. LINDSEY. I believe it was October the 4th, yes, sir.

Senator MACK. Do you remember whether you made that call or he did?

Mr. LINDSEY. I believe he called the White House. I was in California with the President. The phone call got relayed to me in California and I think I probably returned it.

Senator MACK. Now, it's going to take a minute for me to go through these. This is something I've had to learn. You all have lived it, be somewhat patient with me as I attempt to get through this. September the 29th, there was a meeting—September 29th I guess a meeting between Ms. Hanson and Mr. Nussbaum. That is to give some information to Mr. Nussbaum about the 9 referrals. Mr. Nussbaum calls Mr. Sloan into that meeting and there is a continuation of a discussion about the referrals. As I understand it, Mr. Nussbaum then says to Mr. Sloan, that he should get in touch with you.

Let me run through this and then I'll give you—believe me, you'll have an opportunity to respond.

Mr. Sloan does contact you and he believes that that contact is either the same day or it could have been the day after. He then refers or provides you with the information about what had been

passed on to him by Ms. Hanson with respect to the referrals. And we have Mr. Sloan's notes of the conversation, of his conversation with Ms. Hanson about the referrals. Now I understand that there also was confusion over a memorandum. A memorandum that I think was dated October 7th, and that memorandum we believe basically underscores that you had in fact met with Mr. Eggleston and Mr. Sloan around the 29th of September.

And my whole point in running through that, is that I'm under the impression that as of that October 1st or September 30th, that you've got information about the referrals. Now, we also know that you had made some notes of a conversation and during the deposition you had indicated, when you were reminded by this October 7th memorandum, that, yes, these notes corresponded to that meeting that took place either on the 30th or on the 1st. Now, also in the deposition, to be clear about it, I think you began to back away from that, saying that that was that first conversation. Then you got this phone call from Mr. Lyons when you were with the President on October 4th and I think you also testified that you men had a conversation with the President on that trip, October 4th or 5th.

And I believe also that your testimony is something to the effect that, maybe if it hadn't been for Mr. Lyons calling so recently, maybe you wouldn't even have raised it with the President, but you in fact did mention the referrals to the President, on that trip.

Now is that a pretty good——

Mr. LINDSEY. Close, but not quite. Let me go back. I think I testified in my deposition that I remembered having a short conversation with Cliff Sloan in which he informed me that there were referrals, that they expected or that there were leaks and that the Clintons were mentioned but not as targets or subjects. That is the only conversation I remember prior to my conversation with President Clinton.

There are notes that Mr. Sloan has of a September 30 conversation he had with Jean Hanson. There are also notes of a October 7th conversation that Cliff Sloan had with Jean Hanson. There are notes that I have which are undated which say "conversation with Neil/Cliff." If you compare my one note with his two notes, it is apparent to me, and I believe to Mr. Sloan, that he discussed both of his notes with me in one meeting.

Senator MACK. All right. Let me——

Mr. LINDSEY. That meeting had to take place on or after October 7th because they included his October 7th notes from Jean Hanson.

Senator MACK. Let me give you my sense about those notes and about that memorandum. When you compare the two notes, none of the information that Mr. Sloan says he gave to you at a later date shows up in your notes.

Mr. LINDSEY. No, sir, that's not correct.

Senator MACK. That's the way I——

Mr. LINDSEY. Again I've only seen Mr. Sloan's notes in the last 2 weeks. At the time of my deposition, I had not seen his notes at all. My understanding is that the reference to the Early Bird is in Mr. Sloan's October 7 note from Jean Hanson. My note clearly references the Early Bird and has a description of what was in the Early Bird. Mr. Sloan says he learned that in his October 7th con-

versation with Jean Hanson, and it's also referenced in my note. That is why I believe my note occurred on or after October 7th.

Senator MACK. Well, again, I believe we have a disagreement on this and I think rather than for us to spend the time to go through the disagreement, I think we can look at those notes and make some comparison. But, again, the point that I would underscore is, I know there was information that was in fact passed on at the second meeting, that if you had been making the notes at that time would have showed up on your notes. Your notes don't include that information, but again that's something that I think we can take a look at and clear up.

My question to you would be though—do you recollect that you had a conversation with Mr. Sloan and he passed on the referral information?

Mr. LINDSEY. I do recollect that I had a conversation with Mr. Sloan in which he indicated to me that there were referrals that mentioned the Clintons, yes.

Senator MACK. And you think, do you have any dispute as to whether that was the 30th or the 1st?

Mr. LINDSEY. No, I assume it was sometime before we went to California.

Senator MACK. Now, on this trip to California, you did have a conversation with the President?

Mr. LINDSEY. I had a conversation with Jim Lyons in which he also indicated that he had received press inquiries with respect to the referrals or that referenced the referrals. Shortly thereafter, I told the President about my conversation with Jim Lyons and indicated to the President that I understood that there were referrals that mentioned the Clintons but not as subjects or targets.

Senator MACK. Here is the significance of the dispute you and I have I think. When we look at the notes that Mr. Sloan has of his conversation with Jean Hanson, which we believe he passed onto you on the 30th, and we believe your notes reflect that meeting having taken place on the 30th or the 1st, in both of those notes there is a reference to the Governor of Arkansas, Governor Tucker. And my question to you is, in passing this information on to the President during this trip, did you pass on the information about Governor Tucker being named as a subject or a target of the investigation?

Mr. LINDSEY. Again two responses. One, no. Two, I do not believe I learned that information until after I had my conversation with the President and after the President had a meeting with Governor Tucker. Again, you cannot get around the fact, that since Mr. Sloan says he learned about the Early Bird in a conversation on October 7th and since it's clearly referenced in my note, my note had to occur on or after October 7th.

Senator MACK. Again—

Senator BOXER. Mr. Chairman, again we're getting loose on the time and it's really—

The CHAIRMAN. I wanted to let Senator Mack finish—

Senator BOXER. I understand and I just wanted to make the pointed.

Senator MACK. We can finish this up.

Senator BOXER. It's so late and we have another panel and these witnesses have been here since 3:00 this afternoon.

Mr. LINDSEY. Senator Mack, the short answer is no, I did not.

Senator MACK. We have a dispute on this and we'll work on it.

The CHAIRMAN. Mr. Shelby.

Senator SHELBY. Mr. Lindsey.

Mr. LINDSEY. Yes, sir.

Senator SHELBY. I was looking through your deposition. You might need to make reference to it. On page 74, 75, 76—73, 74, 75, 76, it's our Counsel, the Democratic Counsel, asking you about the meeting and I believe he was referring to the meeting of October 14th?

Mr. LINDSEY. As I look at the beginning, it says 'Jack,' so I assume that's Jack DeVore.

Senator SHELBY. That's right and at that meeting Jean Hanson, the Treasury's General Counsel; Jack DeVore, Assistant Secretary of Treasury for Public Relations at the Treasury—he was then—retired then, he was there; Joshua Steiner, Chief of Staff to the Secretary of the Treasury, Bernard Nussbaum, he was there. Neal Eggleston was there, Associate Counsel to the President. Clifford Sloan, Associate Counsel to the President. You, Mr. Lindsey, the Assistant to the President's Senior Advisors and Mark Gearan; is that correct?

Mr. LINDSEY. Correct.

Senator SHELBY. You were asked about the referrals, I think someone—was he a writer with The New York Times, Jeff Gerth?

Mr. LINDSEY. Yes, sir.

Senator SHELBY. Are you familiar with this?

Mr. LINDSEY. Yes, sir.

Senator SHELBY. I believe he had inquired about some of the—had criminal referrals been made without getting into the substance.

Mr. LINDSEY. But he did get into the substance.

Senator SHELBY. Sorry?

Mr. LINDSEY. He did get into the substance. He clearly indicated that he was aware that there were criminal referrals. He had a question about where the referrals had gone.

Senator SHELBY. OK.

Mr. LINDSEY. But he also asked about four checks. He said that he was aware that one of the referrals mentioned—

Senator SHELBY. First, about the referrals, was he asking him why the referrals were not made to Little Rock to the U.S. Attorney's office?

Mr. LINDSEY. Yes.

Senator SHELBY. And what was your response, what was the conversation about there then?

Mr. LINDSEY. Mr. DeVore indicated to us that, in fact, apparently—

Senator SHELBY. This is a meeting—I don't mean to interrupt you now, but this was a meeting with all these people that I just related the names at the White House to try to get together to deal with this situation; is that right?

Mr. LINDSEY. Jack DeVore apparently indicated that he wanted to come to the White House to discuss with us—

Senator SHELBY. He's the Public Relations Officer with the Treasury Department—or Assistant Secretary dealing with public relations.

Mr. LINDSEY. Yes, sir.

Senator SHELBY. OK.

But he didn't come alone then, he brought Ms. Hanson, Mr. Steiner, and then all the lawyers including Mr. Nussbaum, Counsel for the President, all of you—all were there; is that right?

Mr. LINDSEY. I was invited to the meeting, I didn't set it up, and I don't know who invited whom. Mr. DeVore indicated that he had had a phone conversation, I believe the day before, from Jeff Gerth; that Mr. Gerth was aware that there was referrals; that Mr. Gerth understood that those referrals had gone to Washington; and that Mr. Gerth was aware that at least one of the referrals involved four checks.

Senator SHELBY. Four cashier's checks.

Mr. LINDSEY. That was his understanding.

Senator SHELBY. I believe this was yours—your words, if I can read them back to you just to refresh your recollection, “that he,” Mr. Gerth, “knew that these particular referrals”—this is on page 74 of your deposition, Mr. Lindsey—“had been referred to Washington, that he understood”—“he” being Mr. Gerth, the writer of The New York Times—“that the referrals involved or one of the referrals at least involved four cashier's checks, two made payable to Bill Clinton and two made payable to the Clinton for President Committee—Clinton for Governor Committee.” These are your words; is that correct?

Mr. LINDSEY. That's correct, that's my deposition.

Senator SHELBY. OK. Now what transpired after that in this meeting, you—all were trying to decide how to deal with this?

Mr. LINDSEY. Mr. DeVore indicated that he wanted to get back to Mr. Gerth. He wanted to indicate to Mr. Gerth that in fact the referrals had come to Washington but that they had been forwarded on to Little Rock prior to Mr. Gerth's call. So there would be no suggestion that they were being bottled up or that somehow Mr. Gerth's call had caused them to be—

Senator SHELBY. Mr. Lindsey, just for the record here tonight, who was the U.S. Attorney in Little Rock, Arkansas?

Mr. LINDSEY. At this point, I assume Paula Casey.

Senator SHELBY. And what happened? Did she recuse herself from those cases?

Mr. LINDSEY. She did, yes, sir.

Senator SHELBY. And that's why they were referred back to Washington?

Mr. LINDSEY. No, as I understand it.

Senator SHELBY. Or was I getting ahead?

Mr. LINDSEY. I think you're ahead. Again, I don't know this. My understanding is that before they went to the U.S. Attorney's office in Little Rock, they came to Washington—for what reason I have no idea, but that they had gone on to the U.S. Attorney. He wanted to tell Mr. Gerth this so that Mr. Gerth wouldn't write that they were somehow being bottled up in Washington. He also wanted to confirm that there were referrals.

Senator SHELBY. Did you suggest after—this is Mr. DeVore?

Mr. LINDSEY. That's correct.

Senator SHELBY. He wanted to confirm to Jeff Gerth of The New York Times, that there had been, in fact, referrals?

Mr. LINDSEY. That's correct.

Senator SHELBY. Criminal referrals. Why did you suggest that he not do that, but you did; is that right?

Mr. LINDSEY. I did because I believed that referrals were confidential documents and that we should not be confirming the fact of referrals to reporters. He indicated to me——

Senator SHELBY. "He" being Mr. DeVore.

Mr. LINDSEY. "He" being Mr. DeVore, sorry. Mr. DeVore indicated to me that it was RTC policy to confirm referrals. That turns out not to be correct, but that is what he told us.

Senator SHELBY. What could you, what was your recommendation that——

Mr. LINDSEY. My recommendation——

Senator SHELBY. No comment or——

Mr. LINDSEY. My recommendation was——

Senator SHELBY. You weren't going to deny it, though, were you?

Mr. LINDSEY. No. If he felt strongly that we should respond, then I suggested that he should indicate to Mr. Gerth that whatever had come to Washington had been sent on to Little Rock, but that he should not in any way confirm to Mr. Gerth that there were, in fact, referrals because it just didn't seem to be proper.

Senator SHELBY. Mr. Gerth is that?

Mr. LINDSEY. Gerth, G-e-r-t-h.

Senator SHELBY. Did he characterize in his inquiry if these were criminal referrals or did he know that, or do you recall?

Mr. LINDSEY. I don't recall. My memorandum says "criminal referrals," but I don't have any recollection that these words were used. I could look at my contemporaneous notes.

Senator SHELBY. Do you want to go look at your notes?

[Witness reviewed the document.]

Mr. LINDSEY. The word "referral" does not appear in my handwritten notes so I do not know what Mr. Gerth understood.

Senator SHELBY. Mr. Lindsey, have you ever seen copies of those four cashier's checks?

Mr. LINDSEY. Well, there weren't four cashier's checks, but yes, I've seen copies of the checks.

Senator SHELBY. You've said there were four, reading your deposition.

Mr. LINDSEY. That's what Mr. Gerth said.

Senator SHELBY. OK. In fact these were your words, let me—you might be right here. I'll correct that, "he understood," this is you, "he" being Gerth, "that the referrals involved" or one of them, at least, involved—he said that?

Mr. LINDSEY. That's correct.

Senator SHELBY. How many checks were there, in fact?

Mr. LINDSEY. There were three cashier's checks and one personal check.

Senator SHELBY. Three cashier's checks and who were these checks made to?

Mr. LINDSEY. I'll have to look at my note. I don't know whether——

Senator BOXER. Mr. Chairman, are we getting into a scope issue?  
The CHAIRMAN. No.

Senator SHELBY. I was advised by Counsel that I could proceed on this.

Mr. LINDSEY. They were either to Bill Clinton or the Clinton for Governor campaign. Apparently he indicated two were to Bill Clinton, two were to the Clinton for Governor campaign.

Senator SHELBY. Were they written on Madison Savings & Loan?

Mr. LINDSEY. I believe so, yes.

Senator SHELBY. What were the dates of them?

Mr. LINDSEY. Again, I'm not sure. He indicated October [April] 4th or 5th and I think that was correct.

Senator SHELBY. I just saw it in your deposition.

Mr. LINDSEY. I believe Mr. Gerth indicated October [April] 4th or 5th and I believe that was correct.

Senator SHELBY. Did anyone else—I know my time is up on this round, but did anyone else—

Senator D'AMATO. Let me suggest, if I might, Mr. Chairman, why don't you start the clock and we'll yield a—

Senator SHELBY. A couple of minutes?

Senator D'AMATO. Absolutely, take your time.

Senator MURRAY. Mr. Chairman, can I ask a procedural question?

The CHAIRMAN. Yes.

Senator MURRAY. It's 9:30 p.m. and these panels have been here for 6½ hours. We have another panel to go yet tonight and we have your commitment to get that panel tonight. What is your intention from here?

The CHAIRMAN. My intention is to get to that final witness as quickly as possible and as soon as Senators are to the point where they are not seeking to ask additional questions to these witnesses then—

Senator MURRAY. I just wanted to raise the humanity issue. We have had dinner, they haven't.

The CHAIRMAN. I should say now that there's been, you know, an interruption for this purpose that—and I'll come right back to you, Senator Shelby—that my indication is that except for brief comment right now—

Senator BRYAN. Mr. Chairman, I'm so eager to get to Mr. Nussbaum the same day that this hearing began that I'm happy to yield back any of my time.

The CHAIRMAN. I have no other requests on my side at this point unless something detonates—

Senator D'AMATO. We have several other—

Senator SHELBY. If the Senator from New York would yield 2 minutes to me, I will try not to use the whole 2 minutes.

Senator D'AMATO. No, I will not. I will give you what time we have allocated and you can use whatever portion you want to finish your inquiry.

Senator SHELBY. I thank the Senator.

At the meeting, Mr. Lindsey; Ms. Hanson, Treasury General Counsel, just to set the record straight—again, Jack DeVore; Joshua Steiner, Chief of Staff to the Secretary of the Treasury; Bernard



Nussbaum; Mr. Neal Eggleston; Clifford Sloan; Bruce Lindsey; yourself and Mark Gearan.

Mr. LINDSEY. I don't believe that Mr. Steiner was the Chief of Staff to the Secretary—

Senator SHELBY. Right. But he was in this meeting, was he not, on October.

Mr. LINDSEY. I don't believe he was Chief of Staff to the Secretary at that time.

Senator SHELBY. But he was at the meeting in whatever capacity, he was over from Treasury?

Mr. LINDSEY. That's correct.

Senator SHELBY. Whatever, he'd been promoted after that?

Mr. LINDSEY. I think that's correct.

Senator SHELBY. What do you recall was the recommendation of these other people here as far as confirming this criminal referral, yours was that you said don't do it and Jack DeVore obviously says do it and what was Mr. Nussbaum's?

Mr. LINDSEY. I think Mr. Nussbaum also raised a question about whether we should be confirming—

Senator SHELBY. In other words, don't do it. What about Mr. Eggleston?

Mr. LINDSEY. I don't remember whether he had an opinion.

Senator SHELBY. What about Mr. Sloan?

Mr. LINDSEY. I don't remember that he expressed an opinion.

Senator SHELBY. What about Jean Hanson?

Mr. LINDSEY. I don't remember in this conversation that she expressed an opinion on this point.

Senator SHELBY. She didn't say a word on this?

Mr. LINDSEY. She has indicated, I think, that she had begun some sort of check with Treasury to find out—because she had been told the same thing I understood by Mr. DeVore—whether or not that was, in fact, Treasury policy but I don't remember that she indicated that in the meeting.

Senator SHELBY. OK. I thank the Senator from New York for his time.

The CHAIRMAN. Senator Faircloth.

Senator FAIRCLOTH. Thank you, Mr. Chairman.

Mr. Lindsey.

Mr. LINDSEY. Yes, sir.

Senator FAIRCLOTH. I understand that you corrected your earlier testimony that you first heard of Madison Guaranty in 1989, not 1979.

Mr. LINDSEY. No—well, the issue was not when I first heard—

Senator FAIRCLOTH. The investigation.

Mr. LINDSEY. That's correct.

Senator FAIRCLOTH. When was the first time you learned that the Clintons were named in criminal referrals?

Mr. LINDSEY. September 30th or October 1st.

Senator FAIRCLOTH. Of?

Mr. LINDSEY. Of 1993.

Senator FAIRCLOTH. You earlier testified that at times you handled press inquiries relating to matters in Arkansas involving President Clinton.

Mr. LINDSEY. Correct.

Senator FAIRCLOTH. Do you know the current Governor of Arkansas, Jim Guy Tucker?

Mr. LINDSEY. Yes, I do.

Senator FAIRCLOTH. How long have you known him, Jim Guy Tucker?

Mr. LINDSEY. Oh, since the 1960's.

Senator FAIRCLOTH. Are you aware that Jim Guy Tucker came to Washington to meet with President Clinton on October 1993?

Mr. LINDSEY. Yes, sir.

Senator FAIRCLOTH. Were you present at the meeting?

Mr. LINDSEY. No, sir, I was not. I understand Keith Mason of the Intergovernmental Affairs Office at the White House was present at the meeting.

Senator FAIRCLOTH. Who was at the meeting?

Mr. LINDSEY. I understand the President, Jim Guy Tucker and Mr. Mason.

The CHAIRMAN. Let me just say—excuse me, Senator Faircloth, that you've been very willing to let me express a concern and I appreciate that. I think, I don't know where the line of questioning is going, but I think this brings into focus another scope issue and I know you want to get as close to the line as you can without going over it so I just want to raise that concern.

Senator FAIRCLOTH. All right. Well, we'll see where I am with this one. Did President Clinton discuss his meeting with Jim Guy Tucker with you?

Mr. LINDSEY. No, sir—beforehand?

Senator FAIRCLOTH. After or before either one.

Mr. LINDSEY. Well, not beforehand. Afterwards I was asked by the press whether or not Madison or Whitewater came up. I asked the President that question and he indicated to me it had not come up. To that extent I discussed the meeting with the President after the fact.

Senator FAIRCLOTH. Mr. Lindsey, did you receive any press inquiries into the possible relationship between the meeting of Bill Clinton and Jim Guy Tucker and the RTC criminal referrals?

Mr. LINDSEY. No, sir.

Senator FAIRCLOTH. You did not?

Mr. LINDSEY. I had a general inquiry from the press as to whether or not Whitewater/Madison, the David Hale matter, whether any of those issues came up during their meeting.

Senator FAIRCLOTH. This is an important question so take your time and think.

Mr. LINDSEY. I asked the President that question. There was no—

The CHAIRMAN. Let me just interject here. I think it's fair to say because I know that Mr. Hale in whatever testimony he may be giving in cooperation with the Special Prosecutor now in an active investigation, I don't think we ought to in a sense go on into that area. It would be my view that that raises the scope question here and it would also be my view that we ought not to pursue discussion in that area at this time.

There will be a chance to do that later on down the line when the Special Counsel clears this item for us to review, but I think at this point that would not be within our scope, our proper scope.

Mr. LINDSEY. Mr. Chairman, may I? There is a letter that Mr. Cutler wrote to the Chairman on the House side outlining the meeting with the President and a memo from Marcia Hale to the President with respect to that meeting. Could I ask that it be included in the record?

The CHAIRMAN. Well, let me take it and I want to make sure it's within our scope because sometimes things can be made public but we can't, in effect, officialize them through this if they're not within our scope, but if it is and there's no objection, I'll make it part of the record.

Go ahead, Senator.

Senator FAIRCLOTH. May I ask the question and if it's not in scope, we'll drop right there.

The CHAIRMAN. Yes, thank you.

Senator FAIRCLOTH. Clifford Sloan's notes from his September 29th meeting with Jean Hanson talk about a lot of things. They say that the RTC referrals contained allegations about Jim Guy Tucker and that the 1984 Clinton for Governor campaign was being examined as a possible co-conspirator.

Can he answer that?

The CHAIRMAN. What was——

Mr. LINDSEY. I think I have answered that to Senator Mack. Let me repeat. I have one set of notes. Mr. Sloan has two sets of notes. His notes are dated September 30th and October 7th. My one note is undated, but it contains information that is included in both his September 30th and his October 7 notes. So it is clear to me from that that I had that discussion with Mr. Sloan after October 7th—on or after October 7th. So I do not believe I knew that information prior to the meeting.

Senator FAIRCLOTH. All right. This one, if it's out of order, I'll stop it. Did you handle any press inquiries about whether there was any connection between Jim Guy Tucker being named in those RTC referrals and the fact that he had received 1.—\$1.1 million in Government-backed loans that were supposed to go to minority or disadvantaged borrowers?

The CHAIRMAN. Senator Faircloth——

Senator FAIRCLOTH. That one out?

The CHAIRMAN. I would say it is.

Senator FAIRCLOTH. All right. My next question.

The CHAIRMAN. May I just say, without taking any of your time to do so, I appreciate very much your cooperation on this issue. I thank you for that.

Senator FAIRCLOTH. I will go on to the new witness. Thank you for the fair way you've conducted the hearing.

Mr. Stephanopoulos, this past Tuesday evening during Roger Altman's testing, I saw one of your friends from the Clinton campaign who is currently serving as a political consultant and damage control specialist for President Clinton, Paul Negala. He was sitting in the back of the room at around 12:45 watching Mr. Altman's performance before the Committee.

My question is, prior to your appearance before us today, have you had any communication with an outside political consultant concerning your testimony here today?

Mr. STEPHANOPOULOS. No, sir.

Senator FAIRCLOTH. You have not been prompted by a political consultant?

Mr. STEPHANOPOULOS. No, sir, not at all. I've come here to answer your questions just as I have answered them before every other Committee——

Senator FAIRCLOTH. Other than your attorney who, if one, discussed your testimony with prior to your appearance here today?

Mr. STEPHANOPOULOS. Say that again, sir.

Senator FAIRCLOTH. Other than your attorney, with whom have you discussed your appearance here today? I mean your testimony.

Mr. STEPHANOPOULOS. Nothing substantive, sir. I would say that everything I've said here today, I have said dozens of times both in sworn testimony to the Independent Counsel, the Office of Government Ethics. I've also had to speak to it publicly, sir, because there were many leaks not only from the Grand Jury but from other areas about the scope of my testimony. I would ask if that's in the scope of this hearing but I'm happy to answer it.

Senator FAIRCLOTH. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Faircloth.

I don't see any requests at this time on my side, so——

Mr. LINDSEY. Mr. Chairman, again we're very good at correcting the record. Mr. Podesta says I indicated——

The CHAIRMAN. That's what this hearing is all about is getting the record corrected. We'll take any and all corrections. I just want to make sure that we've got all of them.

Mr. LINDSEY. Mr. Podesta says that I said in response to a question from Mr. Shelby that the checks were dated October 4 or 5, it was April 4 or 5. Again, it was——

The CHAIRMAN. Senator Bennett.

Senator SARBANES. Mr. Chairman, I'd like to tell one quick story. We did a conference on the House side on a committee bill that went very late at night—this is with reference to Mr. Nussbaum who is coming next—and at about 3:00 in the morning Senator Bryan who is not a conferee arrived having gone home and slept and gotten up and showered and came in and he wanted to be allowed to participate in the conference.

Of course, he was absolutely fresh and the rest of us were somewhat on the ropes and I want to tell you that he completely dominated the conference at that time. And I just sort of think this story is somewhat relevant as we think of the fact that we have yet another witness coming who, I assume, has somewhat like Senator Bryan been resting himself and preparing for this——

Senator BOXER. Plus he's very excited anyway.

[Laughter.]

Senator KERRY. So let's get him on.

The CHAIRMAN. Senator Bennett, did you have——

Senator BENNETT. Thank you, Mr. Chairman, I do. At the end of my last exchange with Mr. Stephanopoulos I had a number of very powerful questions that I could hardly wait to ask that have now gone stale as have I. And I will save them for my summation on the Floor or whenever and we won't have that exchange because of the hour.

But I would like just for the sake of helping me understand some things and not to score any points off anybody or anything else, go back once again to the fateful day when, according to Mr. Steiner's diary, Mr. Stephanopoulos and Mr. Ickes called to say that Bill Clinton was furious. They also asked how Jay Stephens the former attorney had been hired and so on and so forth. And we've been over the words of his diary so many times I won't bother to repeat them.

I've been looking at your statements here. You, Mr. Stephanopoulos, in your opening statement do not mention—well, I'll get it exactly. Other than a sentence that I find highly ironic in this circumstance, "Mr. Steiner was my regular point of contact at Treasury for obtaining information that affected Administration policy."

Given the things that have been said back and forth today I'm not sure that will still be the case.

Mr. STEPHANOPOULOS. It still is the case.

Senator BENNETT. You talk about blowing off steam with respect to Mr. Stephens, you've had your conversation with Senator Hatch about that and then you say "I believe later that day I had a conversation with Harold Ickes and Roger Altman during which the subject of his recusal was discussed." This says a "conversation." Was that a phone call?

Mr. STEPHANOPOULOS. Yes, sir.

Senator BENNETT. Because that's the context that everyone puts it in.

Mr. STEPHANOPOULOS. Yes.

Senator BENNETT. Now, from the diary, one can draw the inference, it isn't stated specifically but one could draw the inference, that the conversation about Jay Stephens and the conversation about the recusal were the same phone call. Do you have any memory, either one of you, because presumably, Mr. Ickes, you were in on this phone call, indeed, you say in your opening statement, Mr. Stephanopoulos and I called Mr. Altman immediately to confirm that was true. Were the two subjects brought up at the same—

Mr. STEPHANOPOULOS. There were two separate phone calls, Senator. Let me go over it again as I did in my opening statement.

Senator BENNETT. That's all I need.

Was Mr. Ickes in on the first phone call?

Mr. STEPHANOPOULOS. No, sir.

Senator BENNETT. So the first phone call vis-a-vis Jay Stephens was strictly you?

Mr. STEPHANOPOULOS. Yes, sir.

Senator BENNETT. And to whom was it placed?

Mr. STEPHANOPOULOS. Again, I don't know who placed the phone call. I was having a conversation with Mr. Steiner that began discussing the issue of Mr. Altman's recusal to The New York Times.

Senator BENNETT. OK, that helps clear it. So that the phone call in which the exchange regarding Mr. Stephens was between you and Mr. Steiner?

Mr. STEPHANOPOULOS. Yes, sir.

Senator BENNETT. And the phone call regarding the recusal in which Mr. Ickes joined was with Mr. Altman?

Mr. STEPHANOPOULOS. Yes, sir, but the issue of the recusal was also discussed in the conversation with Mr. Steiner.

Senator BENNETT. That would explain why his diary——

Mr. STEPHANOPOULOS. I can't explain his diary, Senator, I can just tell you what happened.

Senator BENNETT. But that helps clear that up and I thank you. I just want to make one quick editorial comment. As weird as all of this procedure seems to be, and it's a brand-new experience for me, I find amazingly and incredibly, in my case, it's working. I'm beginning to think I understand what happened. I know that sounds absolutely incredible given what we have been through, but I'm beginning to get a picture. Now it may be a different picture than some of my friends here, and it may be a different picture than you have or that Mr. Altman has or whatever, but somehow in all of the tumbling around and beating around, the mud is coming off the diamond and it's beginning to shine. And I'm beginning to get what I consider to be a fairly clear picture of what happened and think I can sit down when it's all over and if I were on a jury be prepared to vote with some conviction as to what I think the facts are, so brutal as it is may be as a process, I, for one, am finding it useful.

The CHAIRMAN. We will be very interested in hearing what those thoughts are.

Senator KERRY. Mr. Chairman, I just want to say to my colleague that he might be interested to note also in the Altman deposition that in that conversation referred to, that you just referred to, Mr. Altman denies that he was asked to do anything with respect to Jay Stephens or that there was any——

Senator BENNETT. I understand that.

Senator BOXER. Would my colleague yield?

The CHAIRMAN. The time is up.

Senator D'AMATO. We'll yield it to you.

Senator BOXER. I would like to just call attention to one sentence in Mr. Steiner's testimony before this Committee when he's asked about his comments about Mr. Stephanopoulos saying something to the effect of how can we get rid of Mr. Stephens. He says "as I've said before my intention in keeping this diary was not to give you a precise narrative of the events that occurred. I often use shorthand."

I just want to call attention to that at this point in the record.

The CHAIRMAN. Who's got time?

Senator BENNETT. I can't resist I put an article in the record this morning and I told myself I wouldn't say this but I'm now punchy enough that I've got an excuse later on where Richard Cohen's—Richard Cohen's column says "diary fibbing is now going to take its place alongside not inhaling as a way of ridiculing the Clinton Administration." That may not be fair but that's not the same thing as it's undeserved.

Senator KERRY. You're right.

Senator BOXER. He's honest about that, it's not fair.

Senator D'AMATO. Mr. Chairman, we have some time left. The clock goes on so.

Senator MURRAY. Mr. Chairman, can I raise a procedural question one more time now that it's 10 to 10:00? How much more time you expect this panel to be in front of us?

The CHAIRMAN. I just asked that question to Senator D'Amato. He thought that there was probably another 30 minutes on his side but he can speak to that directly if he wishes to.

Senator D'AMATO. Well, I believe it's about 30 minutes or maybe less. We're drawing to a point where most of the questions have, if not all, of them—I know one of my colleagues has a series of questions to propound. I have a question and an observation. Of course when I make the observation, it will probably be who knows how many minutes of discourse but I think we're down to about a half hour.

Senator MURRAY. Mr. Chairman, I'll just make an editorial comment. This is beginning to remind me when I taught preschool and one of my 4-year-olds always had to have the last word. It was tough to end an argument. [Laughter.]

Senator D'AMATO. Well, I guess you haven't changed, have you?

Senator KERRY. Tonight, America is going to get Leno, Letterman and Nussbaum. [Laughter.]

The CHAIRMAN. Well, if I may, everybody is tired. It's been a long, punishing week and that's true for the witnesses as well as for the Members and we're nearing the conclusion here. I think Members that have questions are going to be permitted to ask them, we'll get the answers and as soon as we can finish, we'll be done. No one wants to be done any sooner than do I.

Senator MOSELEY-BRAUN. Mr. Chairman, can we just make sure that it's a question that hasn't been asked already or asked already more than once because we've had a lot of that.

The CHAIRMAN. Well, let me just say on that point, what often happens, Senators come and go and so a question gets asked by one Senator while another Senator is out of the room, and when they come back, they have not heard that and so they—and that happens on both sides. It's the nature of the problem. I think when questions are being asked repetitively when the same people are in the room, then that's not justified and that certainly is a point that I think you're making. So let's hope we don't have any of that but let's proceed and see if we can't finish up here.

Senator D'AMATO. Mr. Chairman, I believe Senator Mack—Senator Domenici, are you ready to make inquiry?

Senator DOMENICI. I'm going to ask one question and make one observation. Mr. Podesta, a lot has been made, perhaps you're not aware of this, but during previous testimony that Legal Counsel for the Treasury Department, Ms. Hanson, had some major responsibility to correct the record. Once you found out about it, did you have any less responsibility and if you did, why didn't you see to it that the record was corrected?

Mr. PODESTA. Senator, I think that the Administration has a duty to this Committee. As I said in my opening statement, I worked up here for a long time. I think we had a duty to you. That was what my phone call to Mr. Altman was about, was trying to find the best way to make sure the record was complete.

Senator D'AMATO. For which I commend you.

Mr. PODESTA. And I just hope you understand that in the wake of that, in the wake of the criticism of the contacts with regard—we received a subpoena—that we thought it was not reasonable at that point to go forward talking to Treasury about their testimony, what we had said and what Mr. Altman had said, and that's, I think, the best explanation I can give you for what our conduct was.

Senator DOMENICI. So you're saying when Mr. Fiske issued the subpoenas, either to you or the White House or the White House and you, that at that point you thought or were you given legal advice that perhaps you should not proceed any further with this matter? I don't understand the nature of the subpoenas. We're hearing a lot about—

Mr. PODESTA. Senator, the inquiry that the subpoenas were directed at was who said what to who, and I think that having more contacts in that context would have been criticized. And I think it would have been fairly criticized. So while I think people have expressed regret in these hearings about some of their conduct, the one thing I do not regret is that we did not talk to Treasury further about the testimony or about their supplements to the testimony or the letters.

Senator DOMENICI. I have one observation and frankly it may be because I don't understand all of the dynamics and the lawsuits and the pressure you're under, Mr. Stephanopoulos, with reference to all of this various testimony under oath and I gather there's a lot of that. You've testified many, many times under oath. You've stated that here. I do want to tell you honestly, while I was not as familiar with your work in the Congress as was Mr. Gephardt, for whom you worked, I did serve one time for 12 or 14 days when we put together a big economic package.

And I really found that your abilities were rather spectacular, including your ability to summarize, your ability to recall, your ability to wrap up a meeting and remember everything that occurred during the day.

And I must tell you, I read your deposition and—I'm dumbfounded that so many answers say "I don't recall" and "I don't remember." I just have to tell you that on the record, and you're really free to answer right now.

Mr. STEPHANOPOULOS. I'm happy to answer, sir, and thank you. I would just say I also spent several hours before this Committee in depositions giving full accounts of everything that I did. If you ask me looking back 5 months what I remember, if I can remember every word of a conversation, a phone conversation that lasted between 30 seconds and 2 minutes, my honest answer, like I think everybody else in this room, is no. I simply cannot remember every word of a conversation 5 months ago. I would also say, and let me just give you a picture of my day on Friday, February 25th. As I said, I'm a staffer. You know that I'm a staffer. I've done that for a long time. Like many of your staffers, I'm required to go from issue to issue very quickly.

On that day, I began work at 6:00 a.m. I was at work immediately—

Senator DOMENICI. Which day are you referring to?



Mr. STEPHANOPOULOS. This is Friday, February 25th. I received phone calls immediately at 6:00 a.m. about the Hebron Massacre because we had to come up with a response for the Today Show on television. I was dealing with that from about 6:00 to 8:00 in the morning. We immediately went from that to help staff the President on a meeting he had with several Senators, maybe some in this room, about Aldrich Ames. I had to go from that to help staff a meeting on Health Care. I think I probably had two separate lunches that day and a reception and probably 30 or 40 phone calls.

This was a tiny sliver, 30 minutes, 30 seconds to 2 minutes of a 14-hour day in which I had probably 100 conversations. And frankly, sir, I remember an awful lot about that conversation, given the context of that day, and I've told you everything that I have told every other Committee.

I've remembered a lot about that day. I've remembered it to the best of my ability, and I have done the best I can, and I think I've been very direct in answering your questions, and I would finally just say and I feel because I know that people are watching, I want to repeat it again.

This has been looked at by the Special Counsel Robert Fiske. He found no criminal violations—please let me finish, Senator—this was found by the Office of Government Ethics—

Senator DOMENICI. Don't tell me how to behave. Please don't tell me "let me finish." I didn't even say a word. OK?

Mr. STEPHANOPOULOS. Yes, sir. I would like to complete the statement.

Senator DOMENICI. Unless I speak up, you don't have to admonish me or ask me for anything.

Mr. STEPHANOPOULOS. Yes, sir. It was looked at by the Office of Government Ethics. Every single one of these questions was asked dozens of times. They were all answered. The Office of Government Ethics found no ethical violations. It was looked at by Lloyd Cutler, the Counsel. Every single one of these questions was asked dozens of times. He found no ethical violations. I have been asked this by numerous news outlets in public several times. This has been gone over and over and over and over and over and over again. I remember an awful lot of it.

I did not direct anybody to interfere in any investigation. I did not interfere in any investigation. No one in the White House interfered in any investigation, and that's what these Committee hearings are going to find.

Senator DOMENICI. Let me first say I never did accuse you of that so—

Mr. STEPHANOPOULOS. No, I didn't suggest that you did. I just wanted to repeat it.

Senator DOMENICI. In fact, I'm not sure that's why you're here, because someone accuses you of interfering in a criminal investigation. Frankly, I wanted to know some very basic questions. After reading your deposition it's clear there's not very much use in asking you some of those questions because you don't recall and that's what I was alluding to.

Mr. Podesta, your answer said to me that there was a wall because of the subpoenas and the like. But I don't think I asked you

why you hadn't talked to Treasury about it. I think I asked you whether you thought you had fulfilled your responsibility to correct the record or did you think it was only Treasury's responsibility.

Mr. PODESTA. I thought it was ours. I placed the call to Mr. Altman. I thought that that was why I placed the call to Mr. Altman. It was my understanding at the time, faulty I think, that with regard to the matter that we thought needed—absolutely needed—correction, which was the two fall meetings, that that had been done. I think that you have to read the letter and connect the dots back to the question to Senator Bond to take that information out of there, but I thought that information had been provided.

Senator DOMENICI. Thank you.

Senator SARBANES. Is there anyone on this side who wishes to ask a question? Senator D'Amato, we'll come back to you then, I guess.

Senator D'AMATO. Thank you, Mr. Chairman.

Mr. Chairman, I'd like to make an observation. There's been some controversy, to say the least, as it relates to how we should interpret Mr. Steiner's diary. Some of us believe that it is the best evidence as it relates to what really, truly took place. Others point to Mr. Steiner's more recent recollections, and his testimony as indicating there may be a difference and that of others. Now, Josh Steiner obviously made a judgment. He made judgments that he recorded. Indeed, some of them may have been subjective judgments. He made a judgment that he recorded about the President's state of mind in his diary. He said—I believe the word was “furious.” And the question of Roger Altman relating this to him.

Now, some have disputed that. Some have even gone so far as to say, and I think this evening we've heard testimony from Mr. Stephanopoulos, as I recall several hours ago, that on that particular Friday in the afternoon, he went into see the President, and the President wasn't upset, not to mention furious, wasn't upset. Is that a fair characterization of what you—

Mr. STEPHANOPOULOS. Sir, I would point out as I said earlier today, I had that conversation with the President after any conversations with Mr. Steiner, so I don't know how he could have gotten that idea at all but it couldn't be from anything I said because I hadn't talked to the President.

Senator D'AMATO. I didn't say you said that.

Mr. STEPHANOPOULOS. But I wanted to make sure the time was clear. It wasn't until after—

Senator D'AMATO. You made the observation that the President wasn't upset. I would point out that if we believe that this was not a fair and accurate representation, and I know there's a difference and particularly when it relates to how you would interpret the reactions of someone who is rather powerful, the President of the United States. Someone might say furious, someone might say upset, but Josh Steiner, if you believe that he didn't get this information, he had to be a soothsayer, a soothsayer. Because last evening, fully 5 months later, the President of the United States did indicate that he was upset. He qualified why, but he did indicate it. So this is my observation, that's a pretty doggone good, reliable document to go to before people began to get involved in tor-

turing what we found in that diary and attempting to place different lights upon it.

Now, that's my observation, and I yield the balance of my time to Senator Mack.

By the way, I might say that in the Office of Government and Ethics report, it's worthy of note, that it says because "your authority as Secretary of Treasury relates to employees of Democrats" —"the Department," excuse me, "the report of the Inspector General is necessarily focused upon the activities of the officials of the Treasury Department." Now, for that reason, our analysis is not intended to cover, nor should it in any way reflect upon, the actions of the individuals who are employed by the White House. We have heard repeatedly now, repeatedly every witness just about, well, we have been cleared by the Office of Government Ethics.

That is not the case. There has been that little qualifier. I might say that's on page 2, and so I just think that's an important distinction, a very important distinction to make, and I yield my time to Senator Mack.

Senator MACK. Mr. Lindsey, if we could pick up on the conversation we were having a little while ago.

Mr. LINDSEY. Yes, sir.

Senator MACK. I wanted to start with again, a point we do agree upon, and that is on October the 4th, when you're with the President, you've already had a conversation with Mr. Sloan.

Mr. LINDSEY. What I believe was a fairly short conversation, yes.

Senator MACK. But I think you said earlier that in that short conversation, he passed on to you the information that Ms. Hanson had given to him about the 9 referrals and that the Clintons were named as witnesses.

Mr. LINDSEY. Again, I'm not sure he said 9 referrals, but he did indicate that there were referrals with respect to Madison, and that the Clintons were mentioned. I don't know at that point if he used the word "witness."

Senator MACK. That's fine. Now, I want to go to this phone call that you get. We're assuming it came from Lyons and you didn't make the call.

Mr. LINDSEY. Right.

Senator MACK. And Lyons informs you of some rumors, that there are some referrals out there and that they may include something to do with the Clintons?

Mr. LINDSEY. He indicated to me he had press inquiries, members of the press had called him, that they had also called another person who was involved in the 1992 campaign, and that in those press inquiries or in those conversations, the press had indicated that they were aware that there were these referrals.

Senator MACK. Say that to me again.

Mr. LINDSEY. That the press was aware there were these referrals. Sometime after that, in a conversation with the President, I indicated to him that I talked to Jim Lyons, that the press apparently was aware that there were referrals, criminal referrals, that I understood there were referrals with respect to Madison, and that the Clintons were somehow mentioned in the referrals, but not as targets or subjects.

Senator MACK. So you confirmed, then, with the President that there were these referrals out there.

Mr. LINDSEY. Yes. I thought, you know, with the press calling Jim Lyons and other people, that a story was imminent. It turned out that no one wrote about it for another 3 weeks. But at the time, I thought it was clear there were going to be stories shortly about the referrals.

Senator MACK. Again, let's go back to the conversation with Lyons. What was your reaction when he called you? I mean, how did you respond to the information he had given you? What did you say back to him?

Mr. LINDSEY. I don't remember.

Senator MACK. I mean, let me toss out something. Did you say something like, we had heard that there was some information?

Mr. LINDSEY. Senator Mack, I really—I don't have any specific recollection of the conversation at all.

Senator MACK. No, you do have some recollection of the conversation. You just told me you remembered that he said something about the press leaks and about referrals.

Mr. LINDSEY. Actually, I have a note that reflects what he told me. I couldn't tell you—

Senator MACK. Do we have that note?

Mr. LINDSEY. I don't believe so.

Senator MACK. I wonder if we could get that note? My question is apparently, Mr. Lindsey kept some notes of a phone conversation from Mr. Lyons, and Mr. Lindsey was having difficulty in remembering what that conversation was. He was able to confirm that—maybe we're going to get—are those the notes?

The CHAIRMAN. If there's any note that he has that falls within the scope of our inquiry, we should have received it by now, and I would assume that we have. So my first question would be, is this a document that is within our scope or beyond our scope?

Mr. LINDSEY. In my opinion, this document does not relate to White House-Treasury contacts. It involves a conversation with a private attorney about press inquiries he had received from reporters.

Senator D'AMATO. This is 2 days after the contact.

Mr. LINDSEY. I don't have any objection to the Committee having it.

Senator D'AMATO. OK.

The CHAIRMAN. I don't have any objection. Let's let the Counsel look at it to make sure that we're not going beyond what we're supposed to do at this point.

Senator BOXER. Mr. Chairman, while you're doing that, can I make a point of procedure here, ask the two leaders here. We are now, as I calculate it, about 7 hours that these four people have been here at this table. I'm ready to call Amnesty International. They're becoming political prisoners. [Laughter.]

The CHAIRMAN. They're on their way.

Senator BOXER. They haven't eaten, no bread—well, water, yes. I fervently hope that we can get on to the next panel.

The CHAIRMAN. I think, if I may say, I want to accommodate, and I've done everything I can to accommodate, everybody that has questions to ask. I think your point is very well taken. We've been

here a long time. We've covered a lot of ground. I'm not sure that we're plowing new ground. Let's take a look at this, however, I would add my voice to Senator Boxer's appeal that within a short period of time, we try to finish, if we possibly can. I say that also out of respect not just to these individuals but the next witness that's coming, who is an important witness. I think we need some time with that witness as well and we've already made a commitment between ourselves we'll finish with that witness tonight so——

Senator MACK. Mr. Chairman.

The CHAIRMAN. Senator Mack.

Senator MACK. I think frankly I have asked the questions I wanted to ask. It's just when Mr. Lindsey indicated that there were notes of this conversation, we were having difficulty reconstructing, I thought it might have been helpful if we could have had those notes. And I assume——

The CHAIRMAN. The opinion of my Counsel is that he thinks arguably it would fall within the scope. You have no objection. Let's make it a part of the record. Do you want to take a look at it?

Senator MACK. That would be fine, if you make it part of the record.

Senator SHELBY. Mr. Chairman, just an inquiry. When does Letterman, Leno come on? Do they come on, what time, in another hour or so? [Laughter.]

The CHAIRMAN. They're on our next panel. [Laughter.]

Senator SHELBY. Mr. Chairman, they generally bring out the cots when we're around the Capitol. Maybe they can bring out some for everybody.

The CHAIRMAN. I'm told by Senator D'Amato we're very close to being finished on this side. I've had no more requests for time on this side.

Senator MACK. I only really have, I think, one more comment to make.

The CHAIRMAN. Let's take it now and perhaps we can finish.

Mr. LINDSEY. Senator Mack, this note is a note of a conversation I had with Mr. Lyons while I was in San Francisco, on that trip, and as you see halfway down, it says "Gerth Isikoff"—"RTC source-FIRREA," "9 criminal referrals." What I remember about the conversation is based on the fact of this note.

Senator MACK. I can see that. I just want to go back and clarify a point so we don't go away with misconceptions. I want to clarify that now that you've had this phone call with Lyons, he does refer to the referrals, rumors, press inquiries. At this point, you have basically got two sets of information. One set is what you get from Sloan with respect to the referrals and the other is what you've gotten from Lyons. You go to the President. You tell him of the phone conversation, and I think a minute ago, you indicated you told him about the referrals, about the rumors.

Mr. LINDSEY. Right. I indicated to him that there were press inquiries or that probably Jim Lyons had received a call that referenced the referrals, that my understanding was there were referrals, that they did mention him, but that it was my understanding that he was not referenced as a subject or a target.

Senator MACK. So you have confirmed to the President, then, of these rumors?

Mr. LINDSEY. I don't believe there's anything improper, and I believe that Counsel has indicated that there is absolutely nothing improper in informing the President of that, especially in light of the fact that it was now clear to me that the press was aware of it, and that the press, you know, had the story.

Senator MACK. I guess we would probably have some difference of opinion on that. There would be some problem, I think, in you making the claim that there was nothing improper in you passing on nonpublic information. That's not a debate frankly—I mean, you probably disagree with that. And I thank you for your open discussion. Thank you very much.

The CHAIRMAN. Thank you very much, Senator Mack.

I think with that, Senator D'Amato—

Senator D'AMATO. Mr. Chairman, we have no further questions and we thank the Chair for giving all of us an opportunity to fully explore all the questions we thought we had to raise.

The CHAIRMAN. I want to thank the witnesses as well. I think the witnesses were direct in their answers to us. There may be some differences of opinion, but I appreciate the testimony and let me now excuse these witnesses, and we'll in a moment call our final witness.

Senator KERRY. Maybe you can send the Marines to liberate us.

The CHAIRMAN. Bring them right on in.

Mr. Nussbaum, while you're standing, let me administer the oath right now. Do you swear that the testimony you're about to give is the truth, the whole truth, and nothing but the truth, so help you God?

**TESTIMONY OF BERNARD W. NUSSBAUM, FORMER COUNSEL TO THE PRESIDENT; PARTNER—WACHTELL, LIPTON, ROSEN & KATZ, NEW YORK, NY**

Mr. NUSSBAUM. I do, sir.

The CHAIRMAN. I understand you have a statement and we'd like to lead off with that and then we'll go to questions.

Mr. NUSSBAUM. Thank you, Mr. Chairman.

Before I read my statement, I just want to say to you, Mr. Chairman, that I've been watching some of these hearings on TV and because of the concerns that have been expressed at this hearing, I want to assure you, Mr. Chairman, that first—I know it's late in the evening, but I will not be throwing any furniture around the room. I want to assure you of that, sir.

Two, I will try to read my statement in a tone of voice more subdued than I normally read a luncheon menu. And three, I will make every effort, Mr. Chairman, to keep this boundless excitement that I apparently carry around with me, in the eyes of certain people, I'll try to keep that under control.

And let me say, finally, before I start reading my statement, that I've already expressed these feelings and my intentions to Joshua Steiner who will later provide a definitive interpretation of what I meant. [Laughter.]

The CHAIRMAN. That was said in sort of an intimidating manner. [Laughter.]

And I was thinking of recusing myself. [Laughter.]

But I want to sleep on it. [Laughter.]

And make a decision tomorrow. [Laughter.]

Mr. NUSSBAUM. Mr. Chairman, I've already failed, as I can see.

Senator BENNETT. Mr. Chairman, I'm feeling intense pressure.

[Laughter.]

Senator KERRY. If you can keep this going, you are going to beat Leno and Letterman. [Laughter.]

Mr. NUSSBAUM. No, I'm not going to keep it going, Senator Kerry. Now, on more serious matters, because believe me, gentlemen, I do take this hearing very seriously. Mr. Chairman again, Senator D'Amato, and Members of the Committee: I was Counsel to the President of the United States from January 20, 1993 until April 5, 1994.

I was deeply honored to serve my country. This was an extraordinarily challenging and rewarding position. I will never forget it, and I will always be grateful for the opportunity to serve.

We are here today to talk about issues which have significant consequences for the operation of the Executive Branch.

How should the White House Counsel conduct himself or herself when a Federal agency is conducting an investigation that does, or might, involve the President?

Can there ever be any contact between that agency and the White House with respect to that investigation?

As you will see, I do not believe there is, or can be, any flat prohibition against contacts between the agency and the White House. Issues may arise in the context of such an investigation that implicate broader policy issues or indeed, the proper functioning of the Executive Branch. In these circumstances, categorically to prohibit contacts with the White House would weaken the Presidency and do violence to the President's role in our Constitutional scheme.

I am here specifically to discuss with you certain meetings I had with Treasury officials in September and October 1993 and February 1994 relating to the Madison/Whitewater matter. I will describe to you in some detail what happened during those meetings.

But I also wish to make it clear at the outset what did not happen. I did not, nor, as far as I am aware, did anyone else at the White House ever seek to direct the outcome of or interfere with that investigation. That would have been manifestly improper. That did not happen.

In my view—and I hope yours when you understand what occurred—these meetings were proper. They were proper because, in ways I will describe, they facilitated the proper functioning of the Executive Branch. They enabled the White House to perform its official duties. They furthered legitimate public purposes.

I will explain to you what I was thinking as I took the actions I will describe. There are some, some in this room, some outside this room, who looking back disagree with my judgments. But I hope you will come to understand that throughout my term in office, I sought to conduct myself in the highest traditions of public service and of my profession. I believe I did so.

Let me turn to the meetings and contacts.

On September 29, 1993, I attended a meeting with Treasury officials, including Treasury General Counsel Jean Hanson, in my of-

fice. That meeting, which was convened by Treasury officials, concerned a report the Department was about to issue on the Waco incident. At the end of the meeting, Jean Hanson drew me aside. She asked to speak to me.

Ms. Hanson said that the RTC had made or was about to make criminal referrals to the Department of Justice related to an Arkansas savings and loan association. She told me that the Clintons were not objects of the referrals, that is, they were not potential defendants.

She said one of the referrals related to certain checks that had gone to a Clinton gubernatorial campaign and there was a question whether these were proper campaign contributions. She said the Clintons were mentioned as possible witnesses.

Ms. Hanson said that she was telling me about the referrals because she believed that this information would soon leak to the press. She believed the White House should be in a position to respond effectively and promptly to press inquiries.

I called in Cliff Sloan, a member of my staff who had been at the Waco meeting. I asked Ms. Hanson to repeat to him what she had just told me. As she did that, Ms. Hanson added that she thought Deputy Treasury Secretary Roger Altman might have previously sent me some material relating to this subject. I told her I did not recall that.

Sometime later, she told Mr. Sloan she had been mistaken, and that Mr. Altman, in March 1993, had merely faxed to me a 1992 New York Times article concerning the Clintons' Whitewater investment. I subsequently found that article in my files. But I do not recall having received it or ever read it in March 1993 or any time until I discovered it in my files.

I asked Mr. Sloan to be Ms. Hanson's point of future contact if she needed to speak further with us regarding press inquiries.

That concluded the discussion with Ms. Hanson. It lasted about 5 minutes.

Following the discussion, Mr. Sloan or I told Bruce Lindsey what Ms. Hanson had told us. Mr. Lindsey, a Senior White House Advisor at that time normally responded on behalf of the White House to press inquiries concerning Arkansas matters. That was the September 29th meeting. The next contact I recall occurred on October 14, 1993. On that date a meeting took place in my office between Treasury and White House officials. Jack DeVore, an Assistant Treasury Secretary for Public Affairs, had called Mark Gearan, the Director of White House Communications, the day before to ask for the meeting. Mr. DeVore explained to Mr. Gearan that the Treasury had received press inquiries related to the Madison referrals. He wanted to explain how Treasury would respond to those inquiries.

Mr. Gearan asked me if the meeting could take place in my office. He called me on the phone and said could we have this meeting in your office, Jack DeVore just called me. And I was happy to receive this call. I was happy because I had previously issued memoranda to the White House staff—similar to those of my predecessors—counseling that contacts with agencies concerning pending adjudicative or investigative matters had to be cleared through the Counsel's Office. And that's what Mark Gearan was in effect



doing. We recognized that such contacts were potentially sensitive, and that, as a general proposition, they should not occur. However, there was no flat prohibition.

We recognized that sometimes a contact would be necessary to enable the White House to discharge its official functions. In each instance, the Counsel's Office was to be involved in order to ensure that the contact was limited to an exercise of official functions and it did not entail any effort to interfere with or direct the outcome of the adjudication or investigation.

I agreed to the meeting that Mr. Gearan had described to me because I believed it would serve an official function. It was important for the White House to understand what Treasury was going to say to the press so the White House could promptly and effectively respond to press inquiries it would inevitably receive.

The October 14 meeting was attended by Mr. DeVore, Ms. Hanson and Josh Steiner from Treasury, and Mr. Lindsey, Mr. Gearan, myself, Mr. Sloan and Neil Eggleston of my staff.

I remember Mr. DeVore explaining at that meeting that Jeff Gerth, a New York Times reporter, was aware of the referrals to the Department of Justice in the Madison Guaranty matter. He was asking why the referrals had been forwarded to Washington, DC from Kansas City instead of directly to the U.S. Attorney's office in Little Rock. Mr. Gerth apparently believed that the forwarding of the referrals to Washington was unusual. It might suggest special treatment. Mr. DeVore said he was going to advise Mr. Gerth, of The New York Times, that the referrals had been sent to the U.S. Attorney's office in Little Rock before Mr. Gerth had called. A question was raised by someone—I don't remember who—whether it was usual for the RTC to confirm criminal referrals. As I recall, Mr. DeVore said that it was not unusual, but it was done in certain circumstances. We were also told at that meeting—

The CHAIRMAN. Excuse me. In your printed text, I just want to make sure that you said what you meant, or maybe this is a mistype. It says here, as I recall Mr. DeVore said that it was not usual—

Mr. NUSSBAUM. I'm sorry, as I recall, Mr. DeVore said that it was not usual, not usual, that's correct. I'm sorry, Mr. Chairman.

The CHAIRMAN. I just wanted to make sure that's the way you wanted to say it.

Mr. NUSSBAUM. That is the way I wanted to say it. It was not usual, but it was done in certain circumstances.

Senator KERRY. Would it be easier if you followed your text if you picked it up and put it over the top of the mike? I was just curious.

Mr. NUSSBAUM. Thank you, Senator. We were also told that Mr. Gerth was inquiring and would likely ask the White House about the endorsements on four cashier's checks from Madison to the Clinton gubernatorial campaign. In essence, all we were told at this meeting is what The New York Times was saying to Treasury and what Treasury was planning to say to The New York Times.

With respect to the referrals mentioned in the September 29 conversation and the October 14 meeting, I never saw a copy of them. Nor did I ever ask to do so.

In early January 1994—I'm now going to the next contact that I recall—in early January 1994, Joel Klein, the new White House

Deputy Counsel, told me that at the Renaissance Weekend in South Carolina, which Mr. Klein attended, the President had sought to have a brief conversation with Eugene Ludwig, Comptroller of the Currency. The President asked for advice apparently as to how to deal with the recent flurry of Whitewater stories.

Mr. Klein said he told the President and Mr. Ludwig that it would be best if they did not speak about the matter. I told Mr. Klein I agreed and that he had done the right thing. At some later time, in a brief telephone call from Mr. Ludwig, I told him that I agreed with Mr. Klein.

I saw the President shortly thereafter. I told him that I had heard about his brief conversation with Mr. Ludwig. I also said it was my view that he should not speak to Treasury officials about this matter. The President and I agreed that if there were any appropriate discussions to be had, they should be had by Counsel, either White House Counsel if they involved official matters or Private Counsel, if they concerned purely private matters.

The next contact I recall occurred on February 2, 1994, that now famous February 2nd meeting. On that day—I believe it was late in the day actually—I received a call from Mr. McLarty's office asking me to attend a meeting that evening in his office. When I arrived, I found Roger Altman, Ms. Hanson, Harold Ickes [the White House Deputy Chief of Staff], and Margaret Williams [the First Lady's Chief of Staff] in the room.

When I asked what the meeting would concern, because I had no prior indication what this meeting would concern, I was told that Mr. Altman was going to brief us about the statute of limitations process being followed in the RTC's Madison Guaranty investigation. I then asked one of my staff, Mr. Eggleston, to join us.

At the outset of the meeting, Mr. Altman told us that he would be informing us about a process that had been recently discussed with Members of Congress. He then described the RTC Completion Act, explaining that the statute of limitations with respect to civil fraud and intentional misconduct was due to expire on February 28, 1994 in the Madison matter.

He told us that the RTC would have to reach a decision by that date about whether there was a prima facie case of fraud or willful misconduct. He said the RTC would have three options: 1, bring a lawsuit if there was a good faith basis for one; 2, do nothing and let the statute of limitations expire; or 3, seek from potential defendants—including possibly the Clintons—tolling agreements extending the statute of limitations. He indicated that the RTC staff would be in a position to act before February 28, 1994.

Mr. Altman said that the RTC investigation was headed by Jack Ryan, the RTC's Deputy Chief Executive Officer, and Ellen Kulka, the RTC's General Counsel. He told us that he had confidence in them and would be inclined to rely on their recommendations. He said they had both recently come from the Office of Thrift Supervision, the OTS. I said that I had heard of Ms. Kulka when she worked for the OTS and that she was one of a group of tough OTS litigators.

Mr. Altman then turned to a subject that had not been previously identified as a topic for discussion. He said he was considering recusing himself from the Madison Guaranty investigation. He

said he had discussed this with Ms. Hanson and Secretary Bentzen, and they agreed it would be best.

Mr. Altman went on to say, almost in the next breath, that he received ethics advice to the effect that he was not—I repeat not—legally or ethically required to recuse himself. This meant two things to me: First, that Mr. Altman believed he could act impartially in the Madison Guaranty matter; and second, that Mr. Altman and his ethics advisor believed that his acting in the matter would not raise an appearance of partiality within the meaning of the relevant ethical standards.

Notwithstanding this ethics advice, Mr. Altman said he was inclined to recuse himself. Mr. Altman added that he did not believe his recusal would have any effect on the RTC's decisionmaking process, since he expected to follow the recommendations of the RTC staff in any event.

I felt that what Mr. Altman had said raised an important policy issue for the Executive Branch. I was concerned that Mr. Altman's recusal might set a bad precedent for the Clinton and future Administrations.

My experience as a lawyer, the world where I come from, has taught me that if a judge has a legal or ethical reason for recusing himself or herself from a matter under adjudication, he or she should promptly do so. But if there is no legal or ethical reason for recusal—and Mr. Altman said that there was no such legal or ethical reason—then that individual should do his or her sworn duty.

Now, this principle was eloquently expressed by Justice Rehnquist in *Laird v. Tatum* in 1972 when shortly after he was appointed to the Supreme Court, he was asked to recuse himself from a case. After examining the law carefully and finding he was not legally required to recuse himself, he wrote words which I remembered. That "the duty of a Federal judge to sit when not disqualified is equally as strong as the duty to not sit where disqualified."

I believe that the same principle applies to the Executive Branch and regulatory agencies. Public officials should not have the option of avoiding their responsibilities simply because they are difficult, or inconvenient, or because the officials find it personally or politically expedient to step aside.

When I testified last week before the House Banking Committee, I made the same point. Since then, the nonpartisan Office of Government Ethics issued a report which supports this position. The OGE wrote [on page 20 of its report]:

The impartiality provisions of the standards of conduct may not be relied upon by an employee as the basis for recusing himself from a matter because he simply does not wish to be involved or to exert the effort required. Under the standards of conduct, employees are expected to perform their duties fully, unless there is a reason that their participation in a matter will result in an actual conflict, including an inability to act impartially or will result in an appearance of conflict significantly detrimental to the public's legitimate perception of the fairness of the governmental processes involved.

What the OGE is saying, in simple language, is that a public official has a duty to do his or her duty. And that official has no right to retreat behind ethics rules—when those rules do not apply—to avoid doing his or her job. It would be improper to do so. I want to repeat that. What the OGE is saying in simple language is that a public official has a duty to do his or her duty and that official

has no right to retreat behind ethics rules when those rules do not apply to avoid doing his or her job. It would be improper. It would be unethical to do so.

The public policy issue raised by what Mr. Altman said regarding a possible recusal was not merely an academic one or matter of some high falutin principle. It was then a matter of immediate concern to the Administration.

Just a day before this February 2nd meeting, a nominee for the Chair of the FDIC, Ricki Tigert, had been asked by certain Senators on this Committee to agree to commit in advance to recuse herself on any issues connected to Madison or Whitewater. She was asked to do so for the stated reason that she knew the Clintons and was being nominated by the President.

Ms. Tigert had taken the position that, if she were confirmed and asked to address Madison/Whitewater-related questions, she would consult the appropriate agency ethics officer and follow his or her advice. The inquiring Senators indicated that Ms. Tigert's response was not sufficient. They told her if she would not agree to recuse herself in advance, regardless of whether she was legally or ethically required to do so, they would block her nomination.

At the time of the February 2 meeting, I and others in the White House believed it was important for the Executive Branch to resist efforts to force nominees to agree in advance to recuse themselves in situations where recusal was not legally or ethically required. We felt that those seeking Ms. Tigert's commitment to recuse herself were tampering with the agency adjudicative process.

So when Mr. Altman said, sort of out of the blue without any advance notice, that he was inclined to remove himself from the RTC investigation, without a legal or ethical basis for doing so, I felt he might create an unfortunate precedent for our Administration and future Administrations and would make a shambles of our position in the Tigert nomination.

As White House Counsel, as an Executive Branch official, I was concerned about what Mr. Altman was considering doing. But I did not tell him to remain in the matter.

This is what I said to him.

I said that if he was legally or ethically required to recuse himself, he should do so promptly. That's the first thing I said. Obviously, if Mr. Altman had a disqualifying financial interest, or if he believed that he could not decide the matter impartially, or if his continuing to act created an appearance of favoritism within the meaning of the relevant ethics code, any of which was a ground requiring recusal, it would be necessary for him to remove himself.

But he had already told me that he received ethics advice that he did not have a legal or ethical obligation to recuse himself.

So I went on to say, that if recusal was not legally or ethically required, he should consider—he should consider whether he should remove himself. I also said that, even if he ultimately determined to rely on his staff recommendation [as he said he would], the fact that his staff knew there would be a review of its recommendations would help to ensure the fairness and professionalism of the process. I was particularly concerned about the numerous leaks which seemed to accompany RTC actions.

The next thing and the last thing I said to Mr. Altman—I concluded by saying to Mr. Altman that, in any event, the decision on recusal was for him and him alone to make. He said he would give the matter further thought.

The only other discussion I can recall at the February 2nd meeting is Ms. Williams asking if the private lawyers for the parties, including the Clintons' lawyers, would be briefed on the statute of limitations process. Ms. Hanson or perhaps Mr. Altman said that they would consider it.

On the way out of the meeting, I asked Ms. Hanson if Mr. Ryan's and Ms. Kulka's nominations had been submitted to the White House for clearance. [We were normally consulted before agency nominations were approved and I could not recall having heard of their nominations.] Ms. Hanson had, in fact, told me they had been submitted to the White House.

During questioning by Committee staff, I was asked whether I had negative feelings about Ms. Kulka. I responded that I did. I explained that, while I had never met or dealt with Ms. Kulka personally, when she was at the OTS she had been peripherally involved in a case brought by the OTS against a respected law firm in New York.

In private practice, I had represented that law firm. I believed then and I believe now that the OTS acted unfairly and unprofessionally in that matter. It seized all of the assets of the firm at the outset of the litigation, thereby effectively preventing the firm from defending itself.

In the period after February 2nd, I expressed some of these views to members of my staff perhaps in vigorous terms, but I did not do so during the meeting on February 2nd. Nor, indeed, did I do so to any Treasury or RTC official or to any other official outside the White House.

In this connection, at this time, I want to be fair to Ms. Kulka. I watched some of her testimony before this Committee. It was quite impressive. And on March 30, 1994, she and her colleague, Mr. Ryan, wrote what I consider to be a highly professional, independent, even courageous letter to Congressman Leach. After noting that they were not political appointees, they wrote: "No pressure has been exerted by the Treasury, the White House, or any other source in the Executive Branch concerning the performance of our responsibilities with respect to Madison Guaranty or Whitewater since either of us joined the RTC."

Before leaving the February 2 meeting, I want to respond to one claim that was made at the start of this hearing. It was said in an opening statement:

That the reason the White House urged Roger Altman to stay on the case was the fear that the RTC General Counsel who would take over the decision would be too "tough" on the Clintons.

To the extent that this statement was intended to refer to me, my answer is this:

First, I did not urge Roger Altman to stay on the case. I do not believe it would have been improper if I had urged him to stay on. But I did not do so. I asked him only to consider whether he should remove himself if he had no legal or ethical obligation to do so. I

said the decision was his to make. If I wish to urge someone to do something, I am usually not at a loss of words to do so.

And second—my second answer to this contention made at the opening of the hearing—the reason I requested Mr. Altman to consider the matter of recusal further was not a fear that the RTC General Counsel would be too tough. I would have made the same statement no matter who was General Counsel of the RTC. I made it because of the principle I previously discussed, that a public official has a duty to do his or her duty. I also made it because an Altman recusal would undermine our position on the Tigert nomination.

On February 3, Ms. Hanson faxed me a letter Mr. Altman had received from Congressman Leach urging Mr. Altman to consult an ethics officer concerning recusal. She left a message asking me to phone her. When I returned the call that evening, Ms. Hanson told me that Treasury was continuing to research the ethical issues involved in recusal.

I suggested to Ms. Hanson that whoever was doing the research might find it useful to speak to Beth Nolan. Ms. Nolan was an Associate White House Counsel on my staff who dealt with ethics issues. She is a former ethics professor at George Washington Law School and is well known and respected for her expertise. (Ms. Nolan later told me she did in fact have a discussion with the Treasury ethics official, Dennis Foreman.) I also suggested to Ms. Hanson that to the extent there might be ultimately be some concern at the Treasury or the RTC about an appearance of lack of independence of the decisionmakers on the Madison/Whitewater investigation, she might take a look at the civil jurisdiction in the recently appointed Independent Counsel's charter and consider the advisability of the RTC referring these matters to the Independent Counsel.

On February 3, or shortly thereafter, I recall running into Mr. Altman in the hallway of the West Wing of the White House. Mr. Altman told me in a brief conversation that he had given the recusal issue more thought, and he probably would not recuse himself. But I also knew at the same time, as I just said, that Treasury was continuing to research the issue and work on the issue.

Later in February, either Mr. Eggleston or Ms. Hanson told me that Mr. Altman would leave the RTC at the end of March when his term expired and that he either could not or would not seek renewal of his appointment. I also believe that Mr. Altman told me later in February, in another brief conversation, that a Washington lawyer, Larry Simon, was likely to be nominated to head the RTC, and he hoped Mr. Simon's nomination would be confirmed quickly.

There is also an additional conversation, an internal one within the White House—not with Treasury or the RTC or anyone outside the White House—which I believe will help the Committee to understand that there was no attempt on our part to influence the outcome of the RTC's investigation.

In mid-February 1994, one of the lawyers on my staff told me that the RTC had retained Jay Stephens to conduct its investigation of Madison. Mr. Stephens, as you know, had expressed bitter political opposition to the President in the past. When he resigned

as U.S. Attorney for the District of Columbia in early 1993, he did so with a political blast at the Administration.

In response to this news, when I heard Mr. Stephens was hired by Ms. Kulka and Mr. Ryan, I shook my head in dismay and disbelief. I said internally in the White House, the appointment of Mr. Stephens was ridiculous and unfair. I also said there was nothing we should or would do about it.

The meetings and contacts I have described have given rise to considerable controversy. In my view, however, they were appropriate. I was acting to facilitate the proper functioning of the Executive Branch and to enable the White House to perform its official duties. I was acting in the pursuit of legitimate public purposes.

First, with respect to the September 29 meeting, Ms. Hanson provided the White House with notice of a referral that she predicted—quite correctly—the White House would be required publicly to address in the near future.

Treasury understood that neither the President nor the First Lady was a subject of the referral. They were potential witnesses. There was obviously a concern that a partial or inaccurate leak might lead the uninformed to believe that because the Clintons were mentioned—or “named”—in the referral, they were somehow implicated in some improper conduct. In preparation for these hearings and those in the House, I have been questioned about whether I thought Treasury officials had provided the White House with so-called nonpublic information as if there was something illegitimate about an executive agency sharing nonpublic information with the White House. The White House receives nonpublic information all the time.

The real question is whether the information is being properly transmitted and properly used for an official purpose and not for private gain or some other illegitimate purpose.

The White House is required to respond to numerous press inquiries that concern both the official acts and past private behavior of the President and the First Family. It is important that the White House be in a position to disseminate accurate information to the public to ensure that spurious or inaccurate allegations concerning the President are dealt with promptly and appropriately. That’s our job, in part. Otherwise, confidence in the President and in the Presidency could be undermined without justification. The September 29 meeting furthered this public purpose.

There have been suggestions at this inquiry that you’re conducting, that assisting the White House to prepare itself to respond to press inquiries—about an investigation in which the President is named only as a potential witness—does not further a necessary and important public purpose.

What this argument overlooks is the special problems the President faces and the unique responsibilities he has, problems and responsibilities not faced or borne by anyone else.

The President, for example, is much more likely than anyone else to be the subject of leaks. He is the focus of overwhelming media attention. He is the target of opponents who feel no hesitancy in misusing or distorting leaked information in an effort to discredit him. And, of course, he is required to continue to act, at the same time, at home and abroad, as the Nation’s Chief Executive Officer.

In its recent report, the OGE—this report came out after my testimony before the House Banking Committee—the OGE recognizes that “the question of whether Ms. Hanson’s disclosure [of the criminal referral] served an official interest raises a unique issue about the nature of the Office of the President.” It goes on to say that “matters that would be of only personal significance for other Executive Branch officials may take on official significance when the President of the United States is involved. White House staff has long been used in addressing press inquiries regarding essentially personal matters involving the President and the First Lady.”

And it concludes that dealing with press inquiries regarding the President’s and First Lady’s personal lives, including any involvement they may have had with Madison, is a proper White House function.

I would also commend to you an article in yesterday’s Washington Post by Mr. Cutler, my successor, entitled “Heads-Up History.”

Citing examples from the Administrations of Harry Truman, Dwight Eisenhower, John Kennedy, Lyndon Johnson, Richard Nixon, Jimmy Carter and Ronald Reagan, he demonstrates how customary it has been for Government agencies with law enforcement responsibilities to inform the White House whenever a criminal investigation is launched that involves high Administration officials or the President himself.

And one reason for this line of precedent is expressed as follows by Mr. Cutler: “The President is the heart and brain of the Executive Branch. Like a hospital patient undergoing tests, he is monitored by a host of journalists who watch his every move and bombard him with questions. An unanswered question can be a story in itself, especially when it contains a hint of possible scandal. Presidents simply cannot afford to be uninformed or taken off guard.”

In sum, with respect to this issue, both history as reflected Mr. Cutler’s article, and the OGE report of this past week clearly support the position that to inform the White House that the President may be a witness in a criminal referral—a referral almost certain to leak—serves a legitimate public purpose.

It is a proper White House function to help the President to prepare himself, to respond accurately and promptly to press inquiries, to defend himself against misinformation and disinformation.

Second, regarding the October 14th meeting, Treasury officials advised us of a press inquiry that they had already received and their plans for responding to it. By providing that information, the Treasury officials were assisting the White House in understanding the nature of the press’ interest so that the White House could prepare itself to respond to further inquiries. This, as I have stated, is a necessary and important public purpose.

There have been suggestions in this hearing that the limited information conveyed at the September 29 and October 14 meetings should not have been conveyed because it could have been put to an improper use. That is true of virtually all the information the White House receives on numerous matters and it is true, of course, of information received from time-to-time by other branches of Government.



The question, I submit, is not whether the information is subject to possible misuse. Of course it is. The question is whether it was, in fact, misused. Did anyone in the White House violate his or her oath by using this information for a purpose other than to prepare the White House to respond to press inquiries? There is not a shred, to my knowledge, a single shred of evidence, that anyone in the White House did that.

What did happen is that the criminal referrals proceeded on their normal course. They were not stopped, they were not changed, they were not adversely affected in any way. And as of this time, they have been referred to the Independent Counsel for whatever action he ultimately determines to be appropriate.

Finally, with regard to the February 2 meeting, the information regarding the statute of limitations process was no different from that already provided to a number of Members of Congress. In any event, there was no information provided in the February 2 meeting related to RTC procedures on the statute of limitations that White House lawyers did not already know and would not have been obvious to any experienced litigator.

I already explained at some great length the significant public policy concerns with Mr. Altman's statement, that he was considering recusal. It was appropriate to ask Mr. Altman—and that's all I did—to consider carefully whether he should recuse himself in a case involving the President where Mr. Altman was neither ethically nor legally obligated to do so. In Mr. Altman's case, it was all the more important to urge careful deliberation since he and others, such as Ms. Tigert, were being pressed by the President's political opponents to recuse themselves.

As I have stated, I believed then, and I firmly believe now that Executive Branch officials and agency heads should not remove themselves from sensitive matters simply because of political advantage or expediency or for their own personal convenience. They should do their duty.

Now, I feel strongly about the importance of the policy issues that were raised by these meetings. Others, I know, feel less strongly about these policies. They believe that there are other overriding considerations, particularly political ones. Mr. Cutler has a different view than I have.

I respect these different views. But let us be clear. We are talking about legitimate differences of opinion. We are not talking about differences in ethical standards or standards of propriety.

At the same time, as I reach the end of this statement, I want you to understand that I agree that not everything we did in the White House or that I did as White House Counsel was perfect. We could, and should, have done better. I agree with Lloyd Cutler that there were too many contacts, by too many people, about too many subjects—particularly in February 1994.

I feel responsible for some of the lack of discipline reflected in some of those contacts. And I support Mr. Cutler's proposals for changes in White House procedures. All future contacts of the sort I have described should be lawyer to lawyer.

We may have our differences today. But I want you to understand that every moment I held the position of Counsel to the President, I sought, as I said in the beginning, to conduct myself

in the highest traditions of public service and of my profession. And as I've said earlier, I believe I did so.

Thank you, Mr. Chairman, for suffering through this lengthy statement with me.

The CHAIRMAN. Thank you, Mr. Nussbaum. Let me be clear on a couple of things, and then I want to make a couple of very direct points to you. When you were Counsel to the President, who did you report to in the White House?

Mr. NUSSBAUM. I reported to the President and to Mr. McLarty.

The CHAIRMAN. You reported to the President and to Mr. McLarty.

Mr. NUSSBAUM. Yes.

The CHAIRMAN. So it would be fair to say when you spoke to anybody, they might assume you were speaking for the President because you reported to him, certainly as a direct agent of his.

Mr. NUSSBAUM. Yes. I was a direct agent of his. I don't want to make it sound that I was the person in the White House who was closest to the President.

The CHAIRMAN. No, I'm not saying that.

Mr. NUSSBAUM. Or saw the President more than anybody else.

The CHAIRMAN. You were the top lawyer. You were the legal voice for the President reporting directly to the President.

Mr. NUSSBAUM. I was the legal voice to the President reporting directly to the President at times, yes.

The CHAIRMAN. To my knowledge, we've never met or if we have we've never had the chance before now to get acquainted, and——

Mr. NUSSBAUM. We may have talked on the phone, Mr. Chairman, but I don't remember meeting you.

The CHAIRMAN. You're obviously a man of charm and intellect and from everything I know about your record in public service in the past and more recently, I think you brought the best of intentions and motives to the job. Let me just state that and stipulate that at the outset.

I think you had no right whatsoever to inject yourself in any way, shape or form in Roger Altman's consideration of whether he should recuse himself. I think to say one word to him about it was improper on its face on two grounds. I want to tell you what they are, and I feel very strongly about it.

Mr. NUSSBAUM. So do I, Mr. Chairman.

The CHAIRMAN. He came to the White House that day on February 2nd in his capacity as the acting head of the RTC. The RTC is an independent agency. They don't report to you, and you have no authority as the lawyer for the President or as a person with strong personal opinions, and you obviously have them, to in effect, cut into the activity or the decisionmaking of somebody heading that agency on any question, large or small. You just have no right to do that, in my opinion. You don't have that right.

Mr. NUSSBAUM. I disagree with you, sir.

The CHAIRMAN. I know you do, and you'll have a chance to respond when I finish. I feel very strongly that you don't have that right, and I think to take it upon yourself to do that and to cross that line and to, in effect, interfere with the judgment or the thinking of someone who's heading an independent agency of that kind is not a proper function of the President's Legal Counsel. I think

on the first ground, you crossed a line that you yourself should not have crossed.

Number two, I think you crossed it in an area where there was a case under consideration that, in fact, directly involved the President, and you were a representative of the President, for the President, in your role as his Legal Counsel. I think that was the second reason, as hard as it might have been for you to do it because you had very strong feelings, I understand that, I respect the fact that you have strong feelings because I have strong feelings, too. But that was one time when you should have bit your tongue, if you had to bite it in half, and not stick your nose into that decision. I think you had no right to do it on either ground.

I would further add, I don't think Mr. Altman should have come over there, in a sense, putting the idea out there and allowing him to be in a situation where he could be subjected to responses by you, and I think clearly pressure by you—you may not have thought of it as pressure——

Mr. NUSSBAUM. I don't think it——

The CHAIRMAN. In my mind, it isn't important whether you thought it was pressure. It's important whether he thought it was pressure and he felt pressure and I'm convinced that he did. I think his behavior shows that. We've got other evidence that shows it. I think in a situation like this, because of your role reporting for the President—reporting to the President, being his chief lawyer, when you inject yourself into that process, it injects pressure, whether that is your intention or not, I think he felt pressure, and I think he responded to that pressure.

Now, I don't think he should have—if he was going to come over and say that, he should have taken the action to recuse himself first, he should have written a letter, filed a letter and if he wanted to then inform you that it had been done, I think that's an entirely different matter. But to come over and announce—so I think that was a mistake on his part, but to announce the intention and then to have you just barge right into that decision as if you had some right to weigh in on it is a misjudgment on your part. I don't think you had that right.

Now, I understand you have a different opinion. I'm giving you my opinion because we spent a lot of time examining this, just as you have. We've heard a lot of witnesses. I think that a central part of the problem that we have here is the fact that there was an interference with that recusal decision. Mr. Altman had reached the decision. He testified before us, sitting right where you are now, that he had reached a decision to recuse himself. It was in his briefing notes.

After you ventilated your opinion, obviously strongly, and you make a reference here to it, when you have an opinion, you tend to give it strongly, and I felt that tonight just as you read your testimony. I think when you expressed that view as the President's lawyer and other people in that room reinforced expressing reservations about him doing it, I think he felt pressure. He behaved in a manner that demonstrates that because within 24 hours, he not only changed his mind and decided not to recuse himself, but he felt the need to come back to the White House and report that decision in a meeting and to ask for a meeting to do it. He should

not have done that either. Now, I know you don't see it, and that's part of what bothers me, is that you don't even see it yet.

Mr. NUSSBAUM. What bothers me is you don't see important things too.

The CHAIRMAN. I listened to you. I listened to you for 27 pages.

Mr. NUSSBAUM. I know but—

The CHAIRMAN. I think you're demonstrating the very thing that probably happened in that meeting. I was very tempted to interrupt your statement. I didn't do so.

Mr. NUSSBAUM. I'm sorry, Mr. Chairman. I apologize.

The CHAIRMAN. No, but—I'm not taking it personally. I think it's an illustration of your exuberance, having the kind of effect I suspect it had on Mr. Altman at the time because he obviously—he agonized about this decision. He didn't want to displease people. He didn't want people to react negatively to this decision. I think there's plenty that suggests that and I think he got a pretty good dose from you, but that was a time when he was an independent head of an agency, at least in the capacity that he was in there, that you should have respected that difference.

Despite the fact that you had strongly held views, that you're a highly competent lawyer, that you had a strong opinion, you had a strong opinion on Ms. Kulka as well, I think that was one time when you should have kept it to yourself. I think it had no part in these considerations and should not have had. I don't think that was relevant whatsoever to what should have gone on here. The fact it might have been up in your head, I think you were in a different role, in a different capacity and you ought to have restrained yourself from interfering in that decision. I think you did interfere with it, and my own judgment is you affected it and I think that was wrong.

Mr. NUSSBAUM. Can I respond, Mr. Chairman?

The CHAIRMAN. Yes, please.

Mr. NUSSBAUM. Mr. Chairman, I was Counsel to the President. I was Counsel to the President, acting in an official capacity. I was a senior Executive Branch official. What Mr. Altman was suggesting touched on an important Executive Branch policy, what I believe should be an Executive Branch policy and is an Executive Branch policy. An Executive Branch official has a duty to do his duty unless he's legally or ethically required to recuse himself. This affects all Executive Branch officials. We were handling the Tigert nomination. What Mr. Altman was suggesting would have had an effect on that nomination. I was acting in my role as a senior Executive Branch official in order to get him to consider whether or not he should do something which might adversely impact that important policy. Mr. Chairman, with all respect, I understand you feel strongly about it and I'm starting to feel some pressure also—it goes both ways in this, Mr. Chairman. Nonetheless, I felt that I was doing my duty in saying to him, Roger, just consider whether or not you should recuse yourself if you're not legally or ethically required to do so. This is a policy that affects the entire Executive Branch. What he was suggesting was something I believe to be totally unprincipled, wrong. And I'm entitled, as one Executive Branch official to another Executive Branch official, to consider whether he should do that. That is my job and that is my duty.

I understand, Mr. Chairman, that we disagree and maybe other Members of the Committee agree with you and don't agree with me. But I thought, Mr. Chairman, that I was doing my job. I thought, Mr. Chairman, I was acting in a principled manner. I thought, Mr. Chairman, I was acting on behalf of the Presidency, in the President's official capacity. I was not doing it, Mr. Chairman, to affect the private interest of the President. I was not doing it for that reason. I was not doing it, Mr. Chairman, because I held some negative feelings about Ms. Kulka at that time. I was not doing it. I was doing it to enforce or to support an important principle, which I believe exists and which I hope you believe exists, Mr. Chairman.

The CHAIRMAN. But even if you were right on the principle, it would have been somebody else's job to present that point to him, not yours, because you were there representing the President of the United States. This is an independent agency. This is the acting head of an agency announcing his intention to make a decision, and you put yourself right square in the middle of it. You went butting right into it. I'm telling you my view. I don't think you should have done it. I don't care how strongly you felt about it.

Mr. NUSSBAUM. Strong feelings, Mr. Chairman——

The CHAIRMAN. I'm talking about strength of feeling based on the merit of your argument.

Mr. NUSSBAUM. I was about to acknowledge, strong feelings on my part do not justify conduct on my part. It's not that I felt strongly about it. I felt this was the proper thing to do.

The CHAIRMAN. What I'm saying to you is, I think you were wrong. I think it was improper on both those grounds.

Mr. NUSSBAUM. Mr. Chairman——

The CHAIRMAN. So we both have made our statements.

Mr. NUSSBAUM. One further point if I can, Mr. Chairman. I'm very grateful to you for permitting me to engage in this dialogue with you. This notion about the RTC being an independent agency as if it's some Executive Branch agency. The head of the RTC is appointed by the President, and he serves subject to confirmation by the Senate and he serves at the pleasure of the President. It is not an independent agency like the SEC or agencies like that. It really doesn't fall into that category, but I'm not sure that makes a big difference here.

The CHAIRMAN. Wait a second.

Mr. NUSSBAUM. I don't want to pin——

The CHAIRMAN. But you've made that point and you've put it on the record, and I want to challenge that point.

Once the appointment is made of someone to head that agency, that does not create a continuing ability for the President or the President's lawyer to reach into that agency in any way, shape or form. I'm asking you to think about it because that's where the line is and I think you crossed the line on both counts, and that's part of the reason we've got this problem and it's why we're here. I don't say it to say that you had some intention to create a problem for anybody or that you had any improper motive. I'm not saying that at all. In fact, I'm saying that I don't believe that but I think what you did here was wrong on those two counts, and it helped set in motion these chain of events which has caused this position.

Mr. NUSSBAUM. I understand your position, Mr. Chairman.

The CHAIRMAN. Thank you. Senator D'Amato.

Senator D'AMATO. Thank you, Mr. Chairman. First of all, let me say that this is not pleasant. Mr. Nussbaum is a fierce advocate in the highest and finest tradition. There's no doubt in my mind it was that fierce advocacy, not only on behalf of the President, but also the President's Office as well, and I understand your contentions. I've read your deposition as well as your statement tonight. I'm in total agreement as it relates to the Chairman's statements of moving over the line. I have to tell you, there's no doubt in my mind Mr. Altman was under pressure. He felt it. He talked about it. It was written about. It's been reported. We can quibble with the nuances of how it came about, but it did.

And by the way, I have to make an assessment here that at least Bernard Nussbaum tells you where he stands. Came in here like a man. Stood up. I disagree with him, but I have to tell you, that's one thing; reasonable people can have disagreement. But, I think he told us exactly what he felt and I don't quarrel with that. I don't question the way he felt. I don't question his motivations.

It brought us to this point. But there's one other person, at least one other person, I think others have come in also with less than clear positions and tried to save the day for Roger the Dodger. What a gutless wonder, right down to this day. This is a man who will have you believe that everybody else did it. He wasn't responsible for anything. Oh, not Roger the Dodger. This lawyer did it and that lawyer did it and the other one did it and he didn't know. I have to tell you that he's got an excuse. He's got people who should have told him what to say and they didn't tell him, they nodded, didn't nod. It's just incredible.

But there is no further point and no useful purpose, I believe, to make further inquiry of this witness. He at least comes forth and sets forth his position, clearly. We have differences in the record, there's no doubt, but I don't see any useful purpose, Mr. Chairman, in this Senator making further inquiry.

The CHAIRMAN. Thank you, Senator D'Amato. Senator Sarbanes.

Senator SARBANES. Thank you, very much, Mr. Chairman. I actually would like to put a few questions to Mr. Nussbaum.

First of all, it's Altman who came to the White House and raised the recusal matter, the White House didn't go to him; is that correct?

Mr. NUSSBAUM. That's correct, sir.

Senator SARBANES. Now, why was Altman shopping the decision about recusal with people at the White House, do you know?

Mr. NUSSBAUM. No, I really don't. I think—I can speculate—I hate to do this—but I think—maybe I'm affected in part by watching his testimony—I think he was generally troubled and undecided as to what to do. I understand that there's also evidence, and I'm looking at the Chairman when I say this, too, that he decided the day before. I understand it was in his talking points. I didn't know it at the time. I didn't know he had talking points when he was sitting at the February 2nd meeting. It was a Washington thing I learned about when I got to Washington. People don't go to meetings without talking points. But I think he was genuinely confused or searching to us for advice.

Senator SARBANES. Did he raise the issue in terms of I'm thinking of recusing myself, what do people think?

Mr. NUSSBAUM. He didn't quite say it like that but what he said was, he was strongly inclined to recuse himself. I think Ms. Hanson remembers that he said to us that he would recuse himself. I don't remember it like that, Senator Sarbanes. I remember him saying I'm strongly inclined to recuse myself and it just came out of the blue. I'm not saying it's an excuse. If it's improper to have this discussion, I shouldn't have had this discussion. Mr. Cutler's point of view is similar to the Chairman's point of view, at least in some respects it's similar. He disagrees with me. He agrees with the Chairman here. But nonetheless, it came out of the blue. He sort of said it and he sort of waited for us to respond. And since I'm usually a big talker, I'm the only one who responded.

The CHAIRMAN. He didn't have to wait long, did he?

Mr. NUSSBAUM. I say this to Senator Sarbanes and the Chairman, but I'm disproving it today by my testimony and my actions. I think I was really fairly calm at that meeting. I know no one believes this anymore.

Senator D'AMATO. I do.

Mr. NUSSBAUM. Thank you, Senator D'Amato. I really chose my words carefully and I really tried to act carefully because the subject took me by surprise and, therefore, I didn't have time to consider all the implications. Having considered it, I'm not apologetic one wit, as people here can tell, about what I did, but I was careful because it did take me by surprise. I think it would have been appropriate for me to tell him, Roger, you have no business recusing yourself if there's no legal or ethical obligation to do so, but I did not say that. I admit I didn't appear happy. I didn't embrace him or kiss him or anything like that when he announced this thing.

I may have appeared cold, but I didn't tell him to remain on the case. I said three things. I said, one, if you're legally or ethically obligated to recuse yourself, do so. But two, if you're not, please consider whether or not it's appropriate to do so. And I said, three, Mr. Chairman—Senator Sarbanes is still questioning, but I'm still thinking in exchange with the Chairman—I said three, it's up to you. In the final analysis, it's your decision and your decision to make. If that's butting in, if that's pressuring him, if that's leading him in, let other people make that interpretation. I happen to think it's not.

Senator SARBANES. Was Altman in and out of the White House frequently?

Mr. NUSSBAUM. Yes, he was in and out of the White House frequently.

Senator SARBANES. I want to know how the White House ever allowed Altman to go on wearing two hats for such a long period of time, or let me put the question to you this way: If Altman had not been the Deputy Secretary of the Treasury but the acting head of the—the head of the RTC, in other words, above—that was his job. He didn't have a second job as Deputy Secretary of the Treasury, and he were in and out of the White House as often as he was as Deputy Secretary of the Treasury. And you know, you've perceived him as the head of the RTC handling these matters and he raised the recusal issue, would you have perceived him differently?

Would someone have said wait a second, I know you said, well, the President appoints the head of the RTC. He serves at the pleasure of the President, but nevertheless, he's carrying out certain very sensitive responsibilities. And would someone have said, you know, this head of the RTC ought not to be popping in and out of here at the White House all the time? Why doesn't he go off and do his job running the RTC?

Mr. NUSSBAUM. That's right. And people should do their job running their agencies. And people—what I'm having difficulty getting across, as I watch these hearings on television in part, is people don't seem to be, to me, appreciating the notion that a person is obligated to do his duty unless he is legally or ethically required to recuse himself.

Now, I think that's a fundamental principle, a significant Administration policy, and I see no problem with the White House making it clear to people, whether it's Roger Altman or Gene Ludwig who all of a sudden *sua sponte* decides to recuse himself because he reads a newspaper article. I do not think it is in the President's interest in his capacity as President to have a group of officials who run for cover every time some political opponent criticizes him, sends him a letter or some newspaper writes an article about him. If you have—if you are ethically or legally required to recuse yourself, and there are also rules with respect to that, do so. Do so promptly. But if you are not, you stay in your job and you do your duty and if you do not want to do your duty, you quit. You quit. You leave the Government.

Senator SARBANES. Let me ask you, because I see my time is about expired here. I'm interested in Jean Hanson reporting to you on September 29 about the criminal referrals again. This was after the Waco meeting. Was it your understanding or impression that Hanson was bringing this information to you pursuant to a directive or an authorization from Altman, or was it your perception that Hanson was acting on her own in bringing this information to you?

Mr. NUSSBAUM. I didn't—my answer to that, Senator Sarbanes, I just didn't think about it at the time. She didn't say she was coming pursuant to a direction from Altman. She did say, as I indicated in my testimony, that she thought Altman had sent me some material with respect to this matter previously, which was this fax that came in March of 1993, but I had no—

Senator SARBANES. But at the time she told you about the criminal referrals, she also told you that Altman had sent you some material about this matter before; is that correct?

Mr. NUSSBAUM. That's correct. She did tell me that, which turned out to be this fax. But she didn't tell me and I didn't think whether or not she was coming at the direction of Altman. We didn't discuss it and I had no thought with regard to it at the time.

Senator SARBANES. My time is up.

The CHAIRMAN. Thank you, Senator Sarbanes.

Senator Mack.

Senator MACK. Thank you, Mr. Chairman.

I mean no disrespect, but I appreciate what has happened here this week, there has been some—there's some releasing of tensions and I appreciate the way you've handled yourself. I also appreciate



the commitment that you have to protecting the Office of the Presidency. I mean, I think that comes through very, very strongly.

Mr. NUSSBAUM. That's what I was trying to do.

Senator MACK. And you clearly did. I really only have one question and it goes to this point: Given your knowledge of the referrals, that is that the referrals were going to be made, and your discussion with Hanson and subsequent discussions with Sloan, why would you let the President of the United States meet with Governor Tucker on October 6th?

Mr. NUSSBAUM. I don't believe—well, a couple of things. One I don't control—well, let me take that back. I don't control who the President of the United States meets with that's true, but I can offer recommendations and advice to the President and sometimes he will accept my recommendations and advice.

I don't believe I was aware, Senator Mack—well, I'm not sure. I didn't hear in September or October about Governor Tucker being an object of the referrals. I read about that in the newspapers at some point in time, but I don't remember any discussions I had in that regard. In any event, I just don't remember that specifically.

Senator MACK. Well, let me just comment for a second. I mean, remember now you had the first conversation—let me finish.

Mr. NUSSBAUM. I'm sorry.

Senator MACK. You had the first conversations I believe when Ms. Hanson came to the White House.

Mr. NUSSBAUM. Correct.

Senator MACK. OK. You had a conversation with her, you had asked Sloan to remain outside, you then asked him to come back in. Hanson reiterates the information she's passed on to you. You direct Sloan to be the contact. Sloan has a conversation with her the next day, goes over the details including the Clintons being possible witnesses. He refers that information back to you. Now I find it really difficult to believe that you didn't have—that you say you didn't have that information at that time.

Mr. NUSSBAUM. My recollection now is that I didn't—I don't remember having it, but I may have. What happened was, when I talked to Hanson on September 29th, Governor Tucker was not mentioned in that conversation. All she said was what I described in my statement. There was no mention in that conversation. I put her in touch with Sloan. Sloan was waiting outside because of the Waco meeting. I had him come back. He became the point of contact and they had conversations thereafter between September 29th and October 14th.

I'll give you my recollection. I don't recall, Sloan must have reported to me because that was typical, I'm sure he did report to me.

Senator MACK. And he was the point man.

Mr. NUSSBAUM. He was the point man absolutely and it's the way I operate my office, in a normal procedure Sloan would come back and tell me things. I just don't remember Sloan ever telling me about Governor Tucker. He may have, he may not have but what he learned in that regard—

Senator MACK. Mr. Nussbaum, I want to make another point here.

Mr. NUSSBAUM. Sure.

Senator MACK. When we look at the notes of Mr. Sloan's conversation with Ms. Hanson on the 30th of September, it makes a clear reference to the Governor.

Mr. NUSSBAUM. I understand that now, sir.

Senator MACK. And I find it unbelievable that Mr. Sloan wouldn't have reported that to you.

Mr. NUSSBAUM. Well, I can't dispute that. He may have. And it's logical that he would have. I just don't have any memory of it. But even if I did know it at the time, and I have—you know, it's logical that I did know it at the time if Sloan knew it because Sloan would have a tendency to report to me virtually everything he knew with respect to these things.

The fact that the President met with Governor Tucker, one, I don't recall knowing of the meeting at the time. That's number one. And number two, I must say that even if I did know—I'm now sort of engaging in colloquy and speculation—even if I did know, I'm not sure I would have, at least at that point, prevented the President from meeting with him because it's one thing if I learn that somebody, is about to be indicted in some fashion. This is a criminal referral. I have enormous—to put it mildly, I have enormous confidence that the President if he knew about it—I didn't tell him at that point, I understand Mr. Lindsey later told him about the referral. I have enormous confidence that the President would not in any way improperly disclose any information.

Senator MACK. Say that last part again.

Mr. NUSSBAUM. I have enormous confidence that the President, when he met with Governor Tucker, would not improperly disclose any information. The President wouldn't do that. I know the President very well. He would never do such a thing.

Senator MACK. Mr. Nussbaum, I hadn't gotten to that point.

Mr. NUSSBAUM. I understand that.

Senator MACK. But again what I find really difficult to understand is that one of the primary reasons, we have been told all during this hearing, about why it was important for the White House to be aware of this information, was to protect the President.

Mr. NUSSBAUM. That's correct.

Senator MACK. And it is—it's unbelievable to me that a meeting could take place with the Governor of Kentucky—

Mr. NUSSBAUM. Governor of Arkansas, his home State.

Senator MACK. Excuse me, the Governor of Arkansas. It's unbelievable to me that you all would not have stopped that.

Mr. NUSSBAUM. No, no, Senator Mack, with all due respect, I really do disagree. Just because somebody is named in a criminal referral, even as a potential target—

Senator MACK. But think of how it looks. OK go ahead.

Mr. NUSSBAUM. Just because somebody is named in a criminal referral as a potential target does not mean—this is from my experience from private practice—does not mean that that person will be indicted, something—you know, very few of the criminal referrals result in indictments down the line. If in fact somebody is on the verge of being indicted, then I think it would be incredible to let the President meet with that person, but merely the fact that somebody is mentioned in a criminal referral doesn't mean you say

to the President, you shouldn't meet with the Governor of your home State. I don't think that is the right thing to do.

In any event, I played no role in that decision at that time. I don't remember it at that time. I didn't know about the meeting really. But I don't think I would have done anything about it even if I did know about the meeting. So I don't want to try to duck by saying I didn't know about the meeting.

Senator MACK. Well, again, Mr. Nussbaum, first of all, I'm not an attorney so I'm not going to engage you in a discussion about whether that was something some other attorney would have done, but I must say to you, I really do find it hard to believe, (A) that you didn't have the information; and (B) you were unaware that the President was going to have the meeting.

Mr. NUSSBAUM. Senator Mack, Congressman Rostenkowski was under investigation. Everybody knew it publicly. Do you think the President of the United States shouldn't have met with Congressman Rostenkowski to discuss Health Care and taxes merely because he was under a criminal investigation? You know—

Senator MACK. Wait just a minute. I think there is a distinction. We're talking about a case that potentially could involve the President with the Governor of Arkansas.

Mr. NUSSBAUM. No, I don't think it—

Senator MACK. There was definitely a suggestion that they might be witnesses, there is a connection there.

Mr. NUSSBAUM. The President was—the President was potentially a witness with respect to certain campaign contributions that went from Madison to the President's gubernatorial campaign. I didn't understand any connection between a possible case against Governor Tucker and the President.

I think the Rostenkowski analogy is correct. Somebody is under investigation, something may occur, the President has to deal with political figures who may be under investigation. He shouldn't tell them anything about the investigation. He shouldn't discuss it if he knows anything about the investigation, but to say he shouldn't meet with him, Governor of his home State? I don't think that's the correct judgment to make.

Senator MACK. Thank you, Mr. Nussbaum.

The CHAIRMAN. Senator Dodd.

Senator DODD. Mr. Nussbaum, let me turn to page 16 of your prepared statement this evening. Let me, first of all, say thank you for being here tonight.

It just struck me as you were going through this—am I on the right page? Here I may not be. Let me just ask the question. After the February 2nd meeting I understood you to say that you asked some people, possibly Ms. Hanson, whether or not Ms. Kulka and Mr. Ryan's names had been submitted to the White House for clearance.

Mr. NUSSBAUM. That's correct.

Senator DODD. The thought that occurred to me when you said that in your statement was whether or not you expressed to either—I don't know who you had that conversation with, I've forgotten who you said you did.

Mr. NUSSBAUM. Ms. Hanson.

Senator DODD. Ms. Hanson. Did you raise at the time any suggestion by just even raising the issue that the White House should somehow not consider these people because of—

Mr. NUSSBAUM. No, no, I didn't. I knew they were appointed. The reason I said it at the time was I was worried about our processes. I thought that, as nominations came through for these kind of positions, the White House Counsel's Office would normally vet them, play a role with them, give advice with respect to them. I have, for example, personal knowledge—I didn't tell it to Ms. Hanson, other than I said I knew Ms. Kulka was a tough OTS litigator.

Senator DODD. That's the reason I raised it.

Mr. NUSSBAUM. If I would have known Ms. Kulka was being nominated for something I would have said she should to be looked at. You know, I ran into her in a case peripherally. I didn't know her. I never met her in my life. I don't want to overstate this, but she should be looked at. Our processes didn't seem to be functioning well because I'd never heard of it and nobody in my office ever heard of it. That's why I asked Ms. Hanson whether or not the names were submitted to the White House.

Senator DODD. You've been very candid with us and I think most of us like candor. All of us know the feelings when someone has been at cross-hairs with us politically, and all of a sudden we hear they're about to get a position and to be in a position of some influence and how we all react. I think everyone at this table, whether we agreed with what Mr. Stephanopoulos did or not—I'm not certain he does even—could certainly appreciate his reaction to the notion that Jay Stephens was going to be on the case. I don't think there is a Member at this dais who doesn't sympathize with those personal feelings because we've all been there.

The question that I'm raising in a sense is you were candid enough to express to us your concern about Ms. Kulka, given the previous history with the law firm that you represented, and the reasons why. I'm asking whether or not that in any way was going to cause you or the White House in some way to interfere with her being—

Mr. NUSSBAUM. No.

Senator DODD [continuing]. Approved for the job of handling the case with the RTC.

Mr. NUSSBAUM. No. By the time I learned about Ms. Kulka on February 2nd, she was already hired as was Mr. Ryan and once I learned they were hired, even though I asked about our processes, I took not a single step to try in any way to unhire them.

Senator DODD. OK let me go back—

Mr. NUSSBAUM. I acted with them just the way I acted with respect to Mr. Stephens—when I learned about Mr. Stephens, when I did go a little bit ballistic internally in the White House. Somebody used the term about me so I'll use it about myself.

Senator DODD. We don't know anyone on this Committee that goes ballistic, I want to tell you. We don't have that problem in the Senate I want you to know. [Laughter.]

Mr. NUSSBAUM. Even with respect to Mr. Stephens, I said we would and should not do anything about it.

Senator DODD. I don't know which evening it was now that there's been so many of these—but Senator Sarbanes I thought

asked a very good line of questioning and I'm trying to recall, maybe it was of Mr. Altman, maybe it was of Mr. Steiner, I can't recall who it was. This is a very important meeting for this Senator anyway, the meeting of September 29th, because it relates to Mr. Altman's testimony before the Committee on the 24th on this conflict we have between what Ms. Hanson remembers as to why she was at the Waco meeting and what her job was to do there in terms of her discussing the matter of the referrals with you.

What Senator Sarbanes' line of questioning had to do with is this; is Ms. Hanson or was Ms. Hanson the kind of person that would have initiated that kind of a discussion on her own. Senator Sarbanes can interrupt me if I don't ask this correctly, but given the fact that she was General Counsel there, and obviously had a line of authority but certainly moved around, you said you'd met with her, I think, a number of other times, talked to her a number of times. Is it inconceivable that Ms. Hanson could have had this conversation with you without being directed by Mr. Altman, if she had acquired the information directly from someone else and not Mr. Altman?

Mr. NUSSBAUM. That's a tough question. I don't—

Senator DODD. Do you understand the importance of it?

Mr. NUSSBAUM. Oh, I understand the importance of it. Sort of a fight I want to stay out of right now.

Senator DODD. You'll get a lot of allies.

Mr. NUSSBAUM. It's—the answer is I don't know. I have great respect actually for both of them. I have respect for Mr. Altman, I've known him a while, I don't agree with everything he's done, but I have great respect for him. But I also have come to know Ms. Hanson to some extent, and I have great respect for her. I think she's—

Senator DODD. Was your relationship—

The CHAIRMAN. I'm sorry. What were you going to say? You think—

Mr. NUSSBAUM. I think she's a woman of integrity and forthrightness and she's a good person. I mean I dealt with her a number of occasions when she was General Counsel of the Treasury and I was White House Counsel, so I have great respect for both these people and obviously there is some sort of conflict between them with respect to their recollection. Maybe he doesn't remember it and she does remember it, maybe they're both telling the truth. That's what I hope is happening.

Senator DODD. Let me ask you one more question. I think you've answered it to the best of your ability. But you knew her well enough that she wouldn't necessarily have been in awe of you and your position at the White House, she would have been comfortable based on previous relationships to bring up a subject matter with you without having authority from someone else to raise it with you? Is that a fair statement?

Mr. NUSSBAUM. Yes, I agree with that. I'm not saying that happened here but I agree, yes. She wouldn't have been in awe of me. I didn't find very many people in Government in awe of me.

Senator DODD. I guess I don't have to ask about the February 2nd meeting, now do I? Let me run down there. This is a—the dates, September 29th, October 14th, February 2nd, February 3rd,

the 24th, March 1st, these are all the dates we've been hearing about now for the last 5 or 6 days. It's obviously the brackets here in time. We've heard a lot of people talk about where they clearly felt significant mistakes and bad judgment calls occurred. My own view is that the contacts, there were so many and too many people, were sloppy. The March 1st and 3rd ones, I thought, were irresponsible, to put it mildly, in terms of not getting back when there was clearly debate over what was said, and what was not said at this Committee's hearing on the 24th. I think that the whole notion of two hats, as Senator Sarbanes just said, invited its own set of problems.

I'd like you quickly—because I see the light on here—but quickly to go back down here and identify where you think the principal mistakes were made. If you could redo this thing, where were the major mistakes made, where should we as a Committee be looking to say here are the things that should have been done differently?

Mr. NUSSBAUM. Let me tell you there are two areas. One, as I said in my statement, we made mistakes in the White House. Mr. Cutler's report indicates some of those mistakes. There were too many meetings, too many people. I wrote a series of memos designed to prevent contacts between people in the White House and other agencies—regulatory, independent, Department of Justice, Department of the Treasury—with respect to investigative matters. I didn't want people from the White House communicating with any other agencies with respect to those matters unless the Counsel's Office was involved so we could make sure that it was an official, proper, public purpose.

That system, I believed, worked well, by and large, from January 20, 1993, until about February 2, 1994. It broke down. It broke down, to some extent, in February 1994 when too many people in the White House were having too many conversations with people over at Treasury and RTC, with respect to this matter, without Counsel present. I should have been more vigilant and more alert and I take some of the responsibility, maybe most of the responsibility, for that. It broke down.

Mr. Cutler's proposed rules with respect to all conversations shall just be Counsel to Counsel on these issues and no one else is involved, when there are issues with regard to investigations or adjudication, is a good rule. It means, now, even if Counsel is present you can't have such a conversation. The conversation has to be only Counsel to Counsel because if you have other people in on the meetings, then they think they can go out and talk on their own. So Mr. Cutler's suggestion is a good suggestion. That's where we made one mistake, which I'm sorry about, which Mr. Cutler and others in the White House I'm sure will correct as they should correct.

There is one other area I must throw out to you that this Committee should exercise oversight and it would be hard to do things, and that is these enormous leaks that come out of these agencies, the RTC particularly, which are under your oversight supervision. Something must be done with respect to that issue. This is a serious problem in the United States, these leaks that come out of RTC and come out of other agencies, Department of Justice, U.S. Attorney's offices around the country from time to time. This is a serious

problem in our society and part of the reason we had these meetings was basically to defend ourselves against this kind of thing.

This doesn't justify doing everything or anything because somebody is leaking but nonetheless, this is a serious problem. When you get a good man like Louie Freeh to head the FBI and he announces a policy that there shall be no leaks, anybody who is caught leaking will be fired—that's what I believe Director Freeh has said—I think he's going to take control over the Bureau in that sense and prevent leaks. That can be done by him.

I think Janet Reno is trying to make efforts in the Department of Justice, too. But there are too many agencies with investigative responsibilities such as the RTC, which do leak. Too many innocent people are hurt. And that is something this Committee, I think, with all due respect should consider.

Senator DODD. Thank you.

The CHAIRMAN. Thank you, Senator Dodd.

Senator Bennett.

Senator BENNETT. Thank you, Mr. Chairman.

You're quite a refreshing personality, Mr. Nussbaum.

Mr. NUSSBAUM. Well, thank you, Senator.

Senator BENNETT. You've come in here and told us exactly where you stand and we haven't had the lapses of memory nearly as much as the kind we've had from some others. Maybe it has to do with the fact that you don't work for the Government anymore and your job is not in jeopardy.

I would just like to make a few observations. I associate myself completely with the Chairman's opening statement. This Committee feels very strongly about the issue of RTC independence. In my opening statement to the hearings that was my central focus because at that time I didn't understand any of the rest of this stuff that we've now come to understand. I was offended by the testimony of one of the RTC employees, that the RTC has been more politicized in this Administration than in previous ones.

There were several who testified to that. Mr. Altman, of course, denied it, but the career RTC employee had that feeling. That may be part of the reason behind the Chairman's passion because this Administration allowed Mr. Altman to remain in a position where structurally the independence of the RTC was compromised.

What should have been a 2-week, 3-week arrangement until somebody was found and confirmed turned into a year and a half of built-in conflict of interest, in terms of this Committee's interest; that is, that the two should be independent. You're not responsible for that.

It's too late to do anything about it now, but understand that's a large reason why the Chairman was as passionate as he was in my view and one of the reasons why I identify with him.

Now the other half of his statement about the recusal issue, I'm not a lawyer. I think I can understand the English language without having been to law school.

Turn to page 13 of your statement.

Mr. NUSSBAUM. Yes.

Senator BENNETT. You're quoting the OGE guidelines and you very passionately say this means the official has a duty to do his or her duty and you've been very passionate about that. The last

phrase of that guideline referring to employees are expected to perform their duties unless there is a reason their participation, "in the last phrase, will result"—this is the English language I think I understand—"will result in an appearance of conflict significantly detrimental to the public's legitimate perception of the fairness of the governmental processes involved."

Now Secretary Altman made the decision that his involvement in this would result in an appearance of conflict that would be significantly detrimental to the public's perception of the fairness of this thing and he came to the White House to announce that decision. He had already checked with Secretary Bentsen, and Secretary Bentsen has testified that if he had been in Mr. Altman's position, he would have recused himself. So what you're really saying here, Mr. Nussbaum, in your passionate statement that every official should do his duty and we need to enforce that throughout the whole Administration and this is something you would absolutely establish is that if Secretary Bentsen had asked you for advice, you would have told him do your duty and stay there.

My only comment is I think Secretary Bentsen's advice was the correct one. I think subsequent events have demonstrated that Secretary Bentsen's instincts were the correct ones and Mr. Altman's instincts were the correct ones before something happened at the White House to turn him, and that's why I find myself in agreement with the Chairman's position.

Thank you.

Mr. NUSSBAUM. Can I respond?

Senator BENNETT. Absolutely.

Mr. NUSSBAUM. I don't believe Mr. Altman made a decision nor did he say he made a decision when he came to see us, that his continuing to act would result in an appearance of conflict significantly detrimental to the public's legitimate perception of the fairness of the governmental processes involved. He didn't make such a decision. He said just the opposite in effect. What he said to me is that he had consulted ethics people and they told him that he was not legally or ethically required to recuse himself.

That means, Senator, with all respect, that Mr. Altman and his ethics advisor believed that acting in this manner would not raise an appearance of partiality within the meanings of the relevant ethical standards because if, in fact, he made such a judgment, and his ethics advisor made such a judgment then he couldn't come and tell me that he and his ethics advisor believe that there is no ethical or legal reason for him to recuse himself.

What he said to me, Senator Bennett, is that he talked to Secretary Bentsen and he talked to Ms. Hanson and he thought it was best, what he was conveying to me is not this appearance issue that you refer to. What he was conveying to me that he thought it was politically best, public relations best, that he didn't really want to take the heat. He didn't want us to take the heat. That's what he was saying to me. And that is what I think is wrong.

If he made a determination that there was an appearance issue here, then he would have been legally or ethically required to recuse himself, but he did not make such a determination.

And this notion about Mr. Altman being a long-time friend of the President, a close personal friend, which is sort of gaining currency



here, is also, I believe, incorrect, sir. Mr. Altman went to college with the President 25 years ago. I don't think they were in the same class in college. I don't believe Mr. Altman saw the President between 1968 and 1991, until the President started running for office. It is true that Mr. Altman was a high Government official in the Administration. That's true, but that doesn't mean he's precluded from doing his duty and indeed even if he was a close personal friend of the President's, which I don't believe he is, a close personal friendship is not, under the ethics rules, a covered relationship that requires you to recuse yourself. There were no facts that I knew, and no law that I knew that would in any way indicate that Mr. Altman was wrong when he told me that he was not legally or ethically required to recuse himself.

What Mr. Altman was taking was in my view an unprincipled position here. A position contrary to what I believe should be the proper policy for the Executive Branch. Now I know that a lot of people don't agree with me on this thing. Lloyd Cutler doesn't agree with me. Lloyd Bentsen doesn't agree with me. Ms. Hanson doesn't agree with me. You don't agree with me. Chairman Riegle doesn't agree with me. A lot of people don't agree. I lose a vote in this Committee at this time. But I believe I'm right in this thing.

Senator BENNETT. Obviously you do and I won't beat the dead horse any more. I'll simply say for all of my earlier statements of admiration for you which I do not back away from, I will not consult you if I ever get in a circumstance where I need advice on this issue.

Thank you.

Mr. NUSSBAUM. Maybe I'm not the most politically astute person in the world, Senator Bennett, except I happen to believe the best politics is to do your duty, to stand up for what's right and when people come at you and attack as they will, political opponents or newspapers, you explain yourself, you defend your position. To me that is the best politics also, but a lot of people don't agree with me about that either.

The CHAIRMAN. Senator Shelby.

Senator SHELBY. Thank you.

Mr. Nussbaum, you obviously—I never met you until tonight that I recall. I knew what you were doing at the White House as the Counsel, as White House Counsel, is that the proper term?

Mr. NUSSBAUM. Yes, sir.

Senator SHELBY. White House Counsel.

You are obviously a man of strong opinions and there is nothing wrong with that. Strong personality. I would contrast you in my own mind with Mr. Altman sitting there and so forth.

But I've got some problems and I want to follow up with something and I disagree with you on this, too, and I was going to ask a similar question that Senator Bennett got into. On page 13 and I had circled this earlier and I'm going to go back into it. "Or will result"—talking about conduct—"or will result in an appearance of conflict significantly detrimental to the public's"—"to the public's legitimate perception of the fairness of governmental process."

Well, that's what a lot of that was about, what is the perception of this. Mr. Altman, I believe, was on the right track, but he's not as strong as you are as far as personality. Why does he come to

the White House? Obviously a lot of trails led right to you, you know, you were the Counsel to—White House Counsel. He was down there and he was asking you about this. The diary here of Mr. Steiner and I think it's instructive now in a lot—to a large degree, and I can imagine just in my own mind and I think other people could seeing you tonight, seeing your demeanor as—you're a trial lawyer and we do this, we carry our own common sense into this place and our knowledge of men and women and their affairs and personalities. And when he said, talking about Roger Altman going, and he's Mr. Steiner, talking about recusing himself, at a fateful White House meeting—it was fateful. I think it was fateful for Mr. Altman because he backed down. A fateful White House meeting with Nussbaum, Ickes, and Williams, however, and the White House staff told Roger Altman that it was unacceptable—I think it's probably a mild term, watching you here tonight—unacceptable. I can imagine you—maybe you didn't beat him up because you're not a large man, maybe you didn't beat him up with your fist, but I bet he felt he was mauled when he left out of there and I can see that.

And he reacted very—you all reacted very negatively to the recusal and Roger Altman, instead of being a strong man like you are—and you are strong—he backed down the next day and agreed. In other words, he slept on it and he backed down. It was a fateful meeting. And I can see that.

But when you say that a man should stay in there and do his duty as a governmental official when he feels inside that he's got a conflict of interest and there was a perception, sir, whether you agree with me or not, there was a perception and I don't know who created this perception, whether Roger Altman created it, he was real close to the President or not, the perception of the currency in the public was that he was close to the President of the United States. I don't know if he was or not.

But he came down there to see you because you were Counsel to the President, because you were a strong personality and a lot of roads led to you. I think he was afraid of you. He obviously was. He was afraid. You were a strong man. But he made the wrong decision, and, I believe, Mr. Nussbaum, you helped him make the wrong decision by your strong views here. Just imagine what a mauling he went through. I think it was fateful, fateful for him and I——

Mr. NUSSBAUM. Senator, I have known Roger Altman a fair amount of time. I know him from New York, from—he was in the financial business. I'm a trial lawyer, private practice. Roger Altman is not a patsy. Roger Altman may come across in this room——

Senator SHELBY. I didn't say he was that but I said you were a stronger man and you mauled him there that day. In a figurative—sure, you did.

Mr. NUSSBAUM. I don't agree. I remember that meeting. I didn't maul him, Senator. I was surprised by the subject, I was careful what I said and I didn't tell him to stay in the case. I told him he should recuse himself if he was legally or ethically required to do so. I told him he should consider whether or not he should recuse

himself if he was not legally or ethically required to do so. And I told him the decision was for him and for him alone to make.

I don't think that's mauling. I don't think that's pressure. I don't think Roger—I don't think I just rolled over Roger Altman. I'm coming across a little stronger here than I came across in that meeting, although nobody is going to believe that at this point. But I do know what I said and I said the things I just described. Roger is a smart, savvy, tough guy in his own right. He was struggling with this issue, but when somebody comes to me, Senator—and I say this to Senator Bennett and the Chairman and to you—and says, Bernie, I'm going to recuse myself or I'm inclined to recuse myself because I think it's better, the Senate and Secretary Bentsen and Ms. Hanson told me that they agreed that it's better, but my ethics advisor tells me I have no legal or ethical obligation to do so, which means that there is no appearance problem either, because if there's an appearance problem then you can't say you have no legal or ethical obligation to do so, then I see somebody very frankly who is trying to duck doing his duty. And that to me is wrong.

If he wants to duck doing his duty, you quit, you don't recuse. You don't recuse de facto, you don't recuse de jure, you do your duty. He had three ethics opinions, three ethics opinions. One before he came to me and two he got later on, saying he was not legally or ethically required to do so.

What I fail to understand, with all due respect to the Senators here because I do have great respect for this Committee and this body, is why people—why I cannot seem to convince anybody or enough people, of the importance of the concept of doing your duty if there is no legal or ethical obligation to recuse yourself. That's what I'm not getting across and I feel so strongly about it. I feel it's the correct policy both in the judicial branch as well as for the Administration and I believe this Committee should support that position, but apparently I'm—

Senator SHELBY. I disagree with you, but I want to say this: You are an advocate, you're—I might hire you if I needed you as a lawyer, but I sure wouldn't hire you to—

Mr. NUSSBAUM. Senator Bennett won't.

Senator SHELBY. I want to ask you one last question because my time is running. In this same diary entry and I asked Mr. Eggleston—

Mr. NUSSBAUM. Yes.

Senator SHELBY [continuing]. One of your associates, at one time, what did he mean by this and he said this is what he meant: Once again they, they the White House, were very concerned about him, Roger, turning the RTC over to people that you didn't know; in other words, you didn't have a relationship with. That's what Mr. Eggleston said right here at this meeting. Do you agree with that? In other words, why not let him recuse himself if you weren't concerned about who was running the RTC?

Mr. NUSSBAUM. No.

Senator SHELBY. Somebody that would run down to the White House and clear everything with you?

Mr. NUSSBAUM. No, no.

Senator SHELBY. That's what you were interested in.

Mr. NUSSBAUM. No, it wasn't.

Senator SHELBY. And it got Mr. Altman and yourself in deep trouble.

Mr. NUSSBAUM. For better or worse, Mr. Altman was running the RTC at that time. It may have been a mistake in retrospect to let him have these two hats for so long, I can see that, but for better or worse he had the job then and he had no right in my view, under the policies I've talked about, to duck doing his job unless there was a legal or ethical obligation to recuse himself.

Senator SHELBY. There was an ethical obligation and you mauled him and you know it.

Mr. NUSSBAUM. There was no ethical obligation because even the OGE found he had no ethical obligation to recuse himself. He had three ethics opinions that he had no legal or ethical obligation to recuse himself.

Senator SHELBY. You are trying to bolster his confidence or bolster your position with him when he knew inside that he should step down and instead of you walking away from it and saying do what you think is best, basically, you beat up on him and you know you did. You did and you know it, I'm sure you did.

The CHAIRMAN. Senator Bond.

Senator BOND. Thank you very much, Mr. Chairman.

Mr. Nussbaum, we had an opportunity last year, I believe, to meet under pleasant circumstances and I trust we may have an opportunity again.

Mr. NUSSBAUM. I hope so.

Senator BOND. Count me in, though, as one who wholeheartedly endorses the position announced by the Chairman.

Mr. NUSSBAUM. I lost another vote.

Senator BOND. That's true.

Mr. Nussbaum, you're Counsel to the White House, you received information on the nine criminal referrals. Also receiving them were other people in the White House. As Counsel, what directions did you give them about that information and how they should act on it?

Mr. NUSSBAUM. What directions did I give other people at the White House?

Senator BOND. Yes, you got hot stuff. Criminal referrals, nonpublic information. What did you tell them?

Mr. NUSSBAUM. I told them that we received this information, there's going to be a leak. We should prepare ourselves to respond to that leak, that's what I told them.

Senator BOND. That's the sum and substance?

Mr. NUSSBAUM. That is the sum and substance, yes, sir.

Senator BOND. You didn't have any concern that you ought to tell them not to share it with anybody, you ought to tell them that they should not destroy documents? Mr. Lindsey said he talked to Mr. Lyons, a political ally of the President, and they discussed the criminal referral. You know what Mr. Roelle said when he was before us, Mr. Roelle said that he warned Ms. Hanson not to tell the White House because that's where it would leak. When you got that nonpublic information, any Counsel worth his salt would tell the people that you got nonpublic information. Number one, you can't share it with people who don't have a legitimate Government

interest—I should note I don't agree with you that you had a legitimate Government interest. Number two, you can't do anything to destroy evidence or get rid of any evidence, and I don't think anybody here is willing to tell us under oath that documents didn't disappear, that things weren't altered, that files weren't searched on the basis of the nonpublic information which apparently, according to your testimony, not only did the President know, but it also went to Mr. Lyons. It may well have gone to Governor Tucker; it may have gone to others.

Mr. NUSSBAUM. Senator, did you see my staff here the other day, the members of my staff who testified? Beth Nolan and Joel Klein and Neal Eggleston.

Senator BOND. Yes.

Mr. NUSSBAUM. And Cliff Sloan.

Senator BOND. Yes, I did.

Mr. NUSSBAUM. Did you think they were fairly impressive people?

Senator BOND. I think I'm asking the questions, Mr. Nussbaum, but there were people in the White House who looked to you for guidance and you didn't give them the guidance.

Mr. Gearan at least was not a lawyer.

Mr. NUSSBAUM. I think——

Senator BOND. Let me ask you a question.

Mr. NUSSBAUM. Can I respond to you?

Senator BOND. I'm going to have to—are you going to extend the time?

The CHAIRMAN. I'll extend your time. I think he ought to have a chance——

Mr. NUSSBAUM. If I can just respond. I surrounded myself in the White House and the Counsel's Office with excellent people. Some of the other people in the White House, especially Mr. Lindsey, are people of superb character, superb judgment, good lawyers. I don't have to tell them that you shouldn't misuse inside information or nonpublic information you're getting. These people knew their responsibilities, knew their roles. I didn't have to go around telling these people not to do that and indeed, Senator, with all respect, I recognize you feel strongly about this, too. With all respect, Senator, there is not a single shred of evidence that anybody misused this information in any way. Not a single thread of evidence that documents were destroyed, or people tipped off.

Those are just, in my view, Senator, irresponsible charges when somebody makes them when there is no evidence for those charges. And the fact that I didn't tell people not to abuse their oath, it wasn't necessary. These people know that as well as I, perhaps even better than I.

Senator BOND. Mr. Chairman, if I may resume.

I would comment on that. I would make the statement that it's—I think it's significant you used the term “shred of evidence,” and unfortunately, that raises a question because as you and I know if evidence has disappeared, it would be very difficult to prove. That is not the charge that that was done in this case, but the danger of it is the reason that nonpublic information on criminal cases shouldn't be shared.

Now, Mr. Lindsey did say that he had a discussion with Mr. Lyons. Let me ask you, does the same standard apply to judges? You cited Justice Rehnquist. Had President Clinton appointed Mr. Altman and this case, a civil case, come before Mr. Altman, would Altman as a judge have to disqualify himself?

Mr. NUSSBAUM. No, I don't believe so.

Senator BOND. Well, that may be the standard in the Southern District of New York, Mr. Nussbaum, but I've got to tell you just recently, a year ago, I had to file a lawsuit in the Eastern District of Missouri. Some of the judges I had previously appointed to State judgeships. Others, I had voted, as a Senator, to confirm. One of them, our sole contact, said that 22 years ago, he had made a campaign contribution to me. All of them disqualified themselves.

Now, as an advocate, you can make a strong case if you are trying to defend somebody and keep them out of jail that what Mr. Altman did was proper, but if you wrote an ethics exam in a law school and said that in those circumstances a man in Mr. Altman's position would not have to disqualify himself, I think you would get a failing grade because Mr. Altman was in the same position as Jay Stephens, where it would have been ridiculous and unfair for him to act upon it.

Mr. Altman was not trying to duck his job, he was very aggressive in his job and he even faxed you information.

Finally, I would say that when you talk about the need to tell the President everything because the President is so important, that is probably the most awe-inspiring statement of omnipotence that we have heard since, was it Louis XIV who said, "The state, it is I"—*l'etat c'est moi*. You have, I believe, contributed to the ethical lapse that the White House suffered from so greatly in the last year.

Mr. NUSSBAUM. Senator, you know—

Senator BOND. Consider that.

Mr. NUSSBAUM [continuing]. If you're going to flunk me on an ethics exam, then I think you'll have to flunk also the ethics advisors of the Treasury Department who told Mr. Altman that he's not legally or ethically required to recuse himself, you're going to have to flunk the OGE—the Office of the Government Ethics—maybe you, as a professor grading these exams, are correct and I'm wrong, the OGE is wrong, the three ethics opinions of the Treasury Department are wrong.

But there's another thing which you are saying which is so interesting because going in here I thought I was taking the Republican position or the position the Republican party has taken in the past with respect to the Special Counsel's statute. Senator Bond, the Republican party has opposed the Independent Counsel's statute, believing that an Attorney General appointed by the President could act, could perform her duty even with respect to cases against the President or high Executive officials. Now Congress has passed an Independent Counsel statute because it doesn't take that position. Most Republicans took that position. I happened to agree with that position. It sounds like maybe you don't agree with that position.

Under that position, an appointee of the President would be fully entitled to investigate the President or to investigate other high officials of the Executive Branch. An appointee of the President

would be perfectly free and should do his or her duty. I have no doubt that Janet Reno, for example, appointed by the President and confirmed by the Senate, would conduct an appropriate investigation of the President, of me, of you, of anybody, if it was the right thing to do. I didn't think we needed an Independent Counsel statute and many of your colleagues in your party also felt we didn't need an Independent Counsel statute.

When you tell me that Roger Altman cannot—it's just like Jay Stephens because he was appointed by the President—to me that totally undercuts and undermines the position taken by the Republican party with respect to this issue and the position I happen to agree with.

Senator BOND. It's a position taken by Mr. Altman and, finally, he was able to act on it.

The CHAIRMAN. Senator Kerry.

Senator KERRY. Mr. Chairman, thank you very much.

Good morning, Mr. Nussbaum.

Mr. NUSSBAUM. Good morning, Senator.

Senator KERRY. I want to associate myself, first of all, with the questions asked by Senator Sarbanes about the duality of the hat. I want to say to you, sir, that these are serious proceedings. We may joke here and there about being here late or whatever, but we're here and we know why we're here and it's a responsibility for all of us that we care about. I've listened to your full statement, I've listened to my colleagues and I really have to say to you, Mr. Nussbaum, your last page statement, I respect these different views, but let's be clear we're talking about legitimate differences of opinion. We're not talking about differences in ethical standards or standards of propriety. I disagree with you, based on the record.

We are talking about a difference in an ethical standard and a standard of propriety. I must say to you, sir, and I say this as kindly as I can, but as strongly as I can, too, I find your arguments legally, ethically and politically indefensible. They are legally indefensible because you violated your own standards. You say on page 6 that we recognized that such contacts were potentially sensitive and as a general proposition they should not occur. It's sensitive enough to have called Mr. Eggleston in, but not sensitive enough to have known immediately that Mr. Ickes and Ms. Williams had no business being there to discuss this legal matter that belonged to you alone.

Second, it is legally, I believe, wrong because there is a fraud in your argument. You are suggesting to this Committee that you didn't believe in "de facto or de jure recusal," yet Mr. Altman made it as clear as a bell to you in that meeting that it was de facto. You accepted that. You never said a word against it. You knew, according to his own testimony, that he was not going to have anything to do with this. So sworn duty, smorn duty. I mean, come on. He wasn't going out there to do his sworn duty because his sworn duty was not to do a "de facto recusal." But you accepted it was a "de facto recusal."

He told you he was doing a "de facto recusal." And witness after witness has come to this Committee and said it didn't make a difference because he wasn't going to make a decision. He was not performing his sworn duty.

Mr. NUSSBAUM. I remember him saying—can I—if I'm interrupting—

Senator KERRY. I want to just finish and then I'm going to give you a chance—

Mr. NUSSBAUM. I'm sorry.

Senator KERRY. Now, ethically, my other colleagues have talked about some of that, and I point, as they have, to a very, very clear statement in your own standard that you have read to this Committee tonight, and this morning. The standard you gave us is it will result in an appearance of conflict. Now you cite to us these other groups that have made a finding. I've read every one of their statements. I found them wanting. Because they, like you, stuck with—just stuck to the legalese and this is not a business just about legalese. You know, some Senators refuse PAC money. Some Senators don't take gifts. Some Senators never took honoraria. The law didn't require it, but people perceived what you have cited as a higher standard. I respectfully say to you that not to have been sensitive, ethically, to both the friendship, and no one has mentioned this, but also to the fact that everybody in this town talked about Mr. Altman as potential future Secretary of the Treasury. For him to walk into the White House after everyone he talked to had helped him make up his mind to recuse himself and it was their opinion and his that he should recuse himself, you should have said Roger, fine, it's your decision. But no, you're sitting here saying I kept telling him the bottom line was it was his decision, but a whole bunch of stuff comes in between from his boss, from his White House. So any sensitive employee to the future is going to be saying well, gee, they don't really want me to do this.

Now, Senator Shelby said to you it was a mauling. I'm not going to characterize it as a mauling. I don't know what it was. All I know is this public employee had made up his mind to recuse himself. The people who worked for him thought he was going there to do it. He went in there to do it and he told you he was doing it and he came out of there not doing it. That's the bottom line. That's the bottom line. I agree with the Chairman, you should not have done anything. Instead, there was a different opinion. Then, ultimately, this man, after all of this notion of accepting sworn duty, recused himself for The New York Times editorial boy, Howell Rains.

Mr. NUSSBAUM. That's right. That's right.

Senator KERRY. So this is a serious issue here for this Committee to think about what happened in the context of politics, the ethics, and sort of the legal reasoning that you've given us.

Mr. NUSSBAUM. Doesn't that show, Senator, why he recused himself?

Senator KERRY. Beg your pardon?

Mr. NUSSBAUM. When he recused himself in a conversation with Howell Rains of The New York Times, doesn't that really show—

Senator KERRY. It shows a lot of things.

Mr. NUSSBAUM. It shows that he didn't want the public relations heat that would come from acting in this matter and, Senator—

Senator KERRY. Mr. Nussbaum, that is where you are ethically failing here because we live with public relations heat every day. It's the bread and butter of our life.



Mr. NUSSBAUM. Right, and you should take it.

Senator KERRY. And it is a reflection of the public which is what this country is all about. What happened, in this case, is you were dealing with legalese and not a sensitivity to how the public would perceive this, which is ultimately what motivated him to react, which is ultimately what keeps this country straight and true as a democracy.

Mr. NUSSBAUM. Senator, you and I have a profound philosophical difference here.

Senator KERRY. If you think you could ram down the throats of Americans the notion that there was not somehow an appearance of a problem in his being there given the fact that he had this close relationship, then I think you are just missing the standard by which we're living in this community today.

Mr. NUSSBAUM. I'm missing it, the OGE is missing it, his ethics advisors are missing it—

Senator KERRY. No, because I'll tell you what, if you read the OGE report, the OGE report specifically said they could not rule as to Mr. Altman's behavior with respect to the September 29th transfer and they only ruled, if you'll read page 2, as to the Treasury employees, not the White House employees. Don't throw that report at me again.

Mr. NUSSBAUM. Senator—

Senator KERRY. That's what it says.

Mr. NUSSBAUM. It says what it says, Senator.

Senator KERRY. I'll read it to you. Could I have the report, please? I mean, let's—you know, you want to say it says what it says. Let me read it to you. Page 2, second paragraph:

Because your authority as Secretary of the Treasury relates to employees of the Department, the report of the Inspectors General is necessarily focused upon the activities of officials of the Treasury Department. For that reason our analysis is not intended to cover, nor should it in any way reflect upon, the actions of individuals who are employed by the White House.

We could put that in the record at this point.

Mr. NUSSBAUM. I don't object to that, Senator, but the report also indicates that Mr. Altman had no legal or ethical obligation to recuse himself. That's what—

Senator KERRY. I agree, it does reflect that.

Mr. NUSSBAUM. And that's what Mr. Altman told me.

Senator KERRY. But I also read that they took out each of the sort of legal, codified concepts of recusal and frankly, they had to do with a public employee affecting the private sector or a public employee affecting private gain, private decision, but it didn't reflect any applicable notion of ethics with respect to a public employee's impact on another public institution, particularly one that was involved with an investigation. And you yourself were sensitive enough about the investigation to state in your own policy that you shouldn't meet except rarely.

Mr. NUSSBAUM. Senator, he came into our offices on February 2nd and he said I'm inclined to recuse myself, but I am not legally or ethically required to do so. I've been told that and I don't believe it. And I respectfully, Senator, disagree with you.

Senator KERRY. You're entitled to and I'm not going to lambast you.

Mr. NUSSBAUM. When somebody says that to me, I think then you have to do your duty. And if there's political heat, if Howell Rains is going to write editorials against you, if Republicans are going to criticize you, so be it.

Senator KERRY. So do you still believe he should not have recused himself?

Mr. NUSSBAUM. Yes, sir.

Senator KERRY. Well, then, I'm very happy you're not serving as President's Counsel today.

The CHAIRMAN. Senator Domenici.

Senator DOMENICI. First, let me state for the record, Mr. Chairman, that I agree with you and I might also state that, all things considered, your statement tonight is very courageous and these whole hearings have been a testimony of your fairness. Now we have a testimonial beyond your fairness in conducting matters here, your straightforwardness and integrity, and I thank you very much for it.

Mr. Nussbaum, I trust your integrity as much as anyone else's, and I had a lot of difficulty, as I heard you talk about the duty to sit rule. Frankly, you almost remind me of the law professors we have who taught a different kind of law than today, and you might be that kind of lawyer. I'm not at all sure you'd be out there seeking cases like some of them are, which you and I learned was champerty when we went to law school.

But, frankly, it bothered me that you carried an analogy of a duty to sit rule to this situation. Now, frankly, there is no longer a duty to sit rule; that rule has been changed by statute. Title 48, section 455 no longer includes the duty to sit rule, but rather says it obliges judges to recuse where their impartiality, and now I will quote, "might be reasonably questioned." Now, frankly, I believe that is exactly—that is exactly carried over to the last sentence of the so-called ethics rule that you read to us in your statement.

Mr. NUSSBAUM. I agree with that. I agree it's carried over there and I also believe—

Senator DOMENICI. I'm going to let you answer but I want to finish my thoughts. I'm not at all sure even now, having heard you, about the total reason for Roger Altman not recusing himself. But I am convinced more than ever, that he shouldn't have asked you, if he did, and you should not have told him, if you did. My own conviction is he went there convinced that he was going to recuse himself.

Now, there's a lot of testimony to that, and I know you don't agree with it but there's a lot of testimony that he went there already committed in his mind to recuse himself. The Legal Counsel for that agency, Ms. Kulka, she even said, "I can't understand why he isn't resigning." The Legal Counsel for the Department of the Treasury, which has more of a relationship to him and a relationship more unburdened by other things, she told him that he should recuse himself. Secretary Bentsen indicates he should recuse himself so the one person that changes this, as I see it, is you, although I would think that perhaps Harold Ickes was agreeing with you.

I would assume that some of the other people in that room might have been agreeing with you, if not verbally, clearly they weren't

taking his side of this. But let me tell you, you've got to understand what bothers us, and it's not just your duty to serve notion. I mean, this man was working with the First Lady on Health Care. He knew that she was very burdened by this Whitewater matter. He was close to the President, although perhaps not as close as some people may have been saying.

But now he is going to be impressed because you speak for the White House and everything that it stands for. And essentially, I'm not prepared to conclude tonight that you are the sole reason for his changing his mind and thus putting us in this predicament where for days we're trying to find out what happened, what's behind all this. Maybe we might conclude tonight that it was your advice to him that's behind this and he never even bothered to be as simple as that, that you convinced him as a representative of the President.

Frankly, from everything I can glean here, you are a significant part of why he didn't do what in hindsight it seems very, very much the case that he really should have done. It would have been in the interest of the President and the Presidency, which you are so concerned about protecting. I don't have any quibble with your deep concern about duty; I think that's an admirable quality. We don't hear it enough in the United States anymore. But I don't think that's the sole reason why he should recuse himself. Legal duty isn't the only reason. Ethical duty might not be the only reason. But, frankly, I think it was not ethical for you to tell him that, in fact, he should stay on when there are many other concepts that should have been considered.

Now you can respond and use as much time as I have left.

Mr. NUSSBAUM. Senator, obviously I respect your view. I don't agree with you. I profoundly disagree with your view. It seems I disagree with views on both sides of the aisle. There's an even-handedness about this.

Senator, he told me he was not legally or ethically required to recuse himself. He told me he had an opinion to that effect from an ethics advisor. That opinion was then confirmed later in February with two other opinions. Senator, when that happens, when that comes into play, once you make that assumption—maybe you don't want to make that assumption—you don't really want to make the assumption that he wasn't legally or ethically required to recuse himself, but just make it with me for a moment because that's what he told me and that's what his ethics advisor told him. Once you've made that assumption, then your duty to do your duty comes into play and now, the OGE, the Office of Government Ethics, a nonpartisan group headed by a person—respected person appointed by President Bush agrees with me and doesn't agree, with all due respect, with a number of the Senators here tonight.

What it says, and what I quote on page 13, in effect, is that if a person—it says this: That if a person has no legal or ethical obligation to recuse himself, then that person has to act, has to do their duty. That is how I look at it. That's how the OGE looks at it. That's how the ethics advisors, I think, to Deputy Secretary Altman looked at it. It's not how you look at it. It's not how Mr. Cutler looks at it. It's not how Secretary Bentsen looks at it. Maybe I

think I'm right. You think you're right. History will determine who is right.

The CHAIRMAN. Senator Bryan.

Senator BRYAN. Thank you very much, Mr. Chairman. Mr. Nussbaum, I was struck by your comment on page 3 of your statement when you go on to say "I sought to conduct myself in the highest traditions of public service and of my profession." I believe that.

Mr. NUSSBAUM. Thank you, Senator.

Senator BRYAN. I watched a part of your testimony before the House where you spoke, I thought, with some eloquence and a great deal of emotion about how honored you had been to serve as White House Counsel. I think that was real, not staged.

I think a central feature of this, in what I see running through your thought process and your analysis, is what I would characterize as an overlegalistic, mechanistic approach with these issues you had to deal with. Let me talk first about the nature of the RTC. Both you and Mrs. Hanson make the point that it was not an independent agency, and then you go on to cite as authority for that proposition that indeed, unlike the SEC, it did not have a fixed term for its appointees and others.

Now, it's been a long time since I've practiced law, and I will not quarrel with your legal scholarship. You may very well be right in a court of law. But let me suggest to you that I think that that reasoning was fatally flawed in the court of public opinion. I believe it is the perception of the public, I believe it was the intent of Congress, although it may have not been carefully executed, that we did contemplate and intend that the RTC would function separately from the Treasury and that agency ought not to have been considered as if it were some division or bureau within the Department.

So I think that that was a fatal mistake in the reasoning process as you viewed your relationship with Mr. Altman as he approached you in the context of his dual responsibility as Acting Head of the RTC. Let me make a comment, if I may, about the doctrine of legal recusal. Again, as a persuasive advocate, you may very well be right in a strictly legalistic sense. And I would think that it would be a real delight for a graduate student in a school of public administration to hear you expound upon your views and discuss it because I believe that you sincerely believe that. I don't question your judgment.

I must say that, with all due respect, I think that's a very ivory tower approach. I don't think that meets the test of what the public expectation is and Senator Shelby and others have pointed out, that last paragraph, and I shall not burden my colleagues with it this evening, where the perception of fairness by the public, that is a reasonable standard. As an institution of Government, in order to enjoy public confidence, the public must perceive and believe that all who are executing functions on behalf of the Government are acting fairly, even though their conduct would not be prohibited or prescribed by some purely legal standard. That is my sense.

And finally, let me just offer a comment and if I have the chance, I'm going to ask one question and not prolong this discussion. With respect to your relationship with Mr. Altman and how he perceived you, I don't think that you beat him up. As I was hearing your

powerful—and I must say I admire you greatly in terms of your integrity and your courage in expressing your views here, discussing the duty to stay in there and to, in effect, perform what you believe was his responsibility, I thought of the book that I read on the life of MacArthur and Gregory Peck going up to West Point for what MacArthur talked about was his final rollcall where he gave that great emotional speech, duty, honor and country.

Let me suggest that anybody in your presence who is treated to the kind of discussion that you've given us tonight, I think, would have left that meeting with the belief, duty, honor and country compel me to do so. I've just heard Mr. Nussbaum give that point of view. That's my perception. May I ask you a question?

Mr. NUSSBAUM. I'm complimented to be compared to General MacArthur's speech at West Point. [Laughter.]

Senator BRYAN. If your performance that afternoon on the 2nd of February was anything akin to what it has been this evening, I believe Mr. Altman reached that conclusion.

Mr. NUSSBAUM. He also said in his speech at the moment of his death as he goes over to the river on the other side——

Senator BRYAN and Mr. NUSSBAUM [simultaneously]. "Be the corps of the corps of the corps."

Senator BRYAN. I think that's what Mr. Altman was thinking but I think he was thinking of a different corps. [Laughter.]

Mr. NUSSBAUM. Touché, Senator.

Senator BRYAN. Let me ask you this one question, if I may, because you go on in this powerful discourse to describe that, generally speaking, and I'm paraphrasing, and if I do violence to the paraphrase, please correct me because I'm not trying to put words in your mouth, but you're saying, generally speaking, pending adjudicative or investigative matters, that, generally speaking, contacts are not desirable.

Mr. NUSSBAUM. Correct.

Senator BRYAN. That's not the thing. But you say that there should be no flat prohibition.

Mr. NUSSBAUM. That's also correct.

Senator BRYAN. You go on to say we recognize that a contact may be necessary to enable the White House to discharge its official functions.

Mr. NUSSBAUM. Correct.

Senator BRYAN. Give me an example, not in the context of the Madison issue as it relates to Mr. Altman, but I'm interested in your thought process. Give me a couple of thought processes where you think it may be justified.

Mr. NUSSBAUM. A senior Congressman is a subject of a major investigation, on the verge of being indicted, and the President is dealing with him on significant public policy issues. I don't think the President should read about that indictment in the newspapers, if and when that indictment comes down. I think there's a situation where the White House can have contact. Or a senior Cabinet official is under serious investigation, with respect to possible misconduct, either while a Cabinet member or prior to being a Cabinet member.

I think there it should be Counsel-to-Counsel contact with the appropriate investigating agency, letting us know what's going on,

so the President can be informed, on a confidential basis, that one of his Cabinet officers may be indicted or one of his senior political allies in the Congress may be indicted. The President then can shape his own conduct with respect to how to deal with that person or persons. He's certainly not entitled to tell the Attorney General or anybody else, stop the investigation. I don't want this person indicted, he's helpful to me on this issue or that issue. But at least he'll know what's coming. He shouldn't be blindsided in that respect.

Those are some of the examples that may occur. This, I recognize, is a more sensitive issue that we're discussing here because this is an investigation, at least by February, and involved the President or potentially the President himself. We already had an Independent Counsel. We get an RTC civil proceeding. In September and October, it wasn't that sensitive because the President was just a potential witness at that point. But even there, historical precedent shows that contacts are appropriate. Mr. Cutler's article points out and Senator Dodd, at the beginning of these hearings, read from a Subcommittee report with respect to contacts that the Attorney General Civiletti had with the President with respect to Billy Carter.

Senator Dodd, when he made that statement, he said, "Well, it may not be quite analogous." Of course, he's right. It's not totally analogous because you had foreign affairs. You had Libya. On the other hand, you had the President's brother, family member. When we received a contact in September and October 1993, the President wasn't a target. He was just a witness. So in some ways, the contact that was made with respect to Billy Carter was much more sensitive than the contact that was made in September and October 1993.

And yet, a bipartisan Subcommittee of this Senate, as Senator Dodd read, I'm not going to read it, it's contained in Mr. Cutler's article, found that contact perfectly appropriate. For the same reason, I believe, these contacts were perfectly appropriate. They helped perform legitimate official functions. I've taken a long-winded way of answering your question, Senator.

Senator BRYAN. Good evening. Thank you.

The CHAIRMAN. Thank you, Senator Bryan.

Senator Boxer.

Senator BOXER. Mr. Chairman, thank you very much. Before I start, can I ask you a procedural question which I hope won't take away from my 7 minutes and that is we are waiting for a transcript to come up. I understand that Ms. Hanson has been deposed on that remaining question that I asked about, and others had other questions, as I understand it.

The CHAIRMAN. Right.

Senator BOXER. And my understanding, around 1 a.m. we'll have that transcript. Is that the understanding of Counsel?

The CHAIRMAN. Our hope is we'll have it sometime quite soon. They're working as quickly as they can to transcribe it.

Senator BOXER. I think it's very important that we have that before we adjourn this morning.

The CHAIRMAN. That's why we're making every human effort to get it.

Senator BOXER. Thank you very much for everyone's cooperation on that point.

Mr. Nussbaum, I want to start off, you don't work at the White House anymore. You're back to normal life.

Mr. NUSSBAUM. That's correct.

Senator BOXER. And I underscore that. But I think some of the experiences that you had and some of the problems and some of the good things that happened while you were there are important for us to go over. I think the way you handled the Ludwig matter, to me, was the model of how all of these things should have been handled. You didn't call in so many people to deal with an issue. There was a contact that was made. You found it improper. Mr. Klein quickly got the answer, and that was the end of that.

And unfortunately, I feel on these other matters, again, that type of model was not followed. That's an opinion here. Now, I want to talk about the recusal matter as well. I think there's a lot riding on this issue. And I don't think it's just about Mr. Altman or you. I think it's about the White House, and therefore, I think it's very important that I tell you what I think and that you respond to it. At least, it's important to me——

Mr. NUSSBAUM. I'd like to hear what you think.

Senator BOXER [continuing]. And hopefully to the people who sent me here. I believe that Roger Altman bringing the issue up with you was not right for him to do. I think it puts you in a very difficult position. At the same time, I feel that when it was brought up, and clearly you were surprised by it, you stated that you were surprised by it, you should have taken a deep breath, in my opinion, and gotten right to your bottom line. Now, you've told us your bottom line—as a matter of fact, Maggie Williams told us your bottom line that she clearly remembers. It's up to Roger.

Mr. NUSSBAUM. That's right.

Senator BOXER. That was your bottom line.

Mr. NUSSBAUM. It was.

Senator BOXER. But in the meantime, it took you a little while to get to your bottom line, and I think that's where some of the problems come in. Now, when Mr. McLarty was asked, he said in a very straightforward way from everything we can gather, Roger, it's your decision.

Now that you have shared with us, and I think Senator Bryan has expanded on it, expounded on, your view, I understand why it was very difficult, if not impossible, for you to go straight to your bottom line. You thought that Mr. Altman or, as I gather, anyone who had asked to be recused who didn't have to be recused because of legal reasons, you think that person is acting in an unprincipled manner. You said, and I'm quoting from you, you thought "it was unprincipled of Roger." I'm just trying to tell you how I feel about that. I think that is a very harsh and unfair judgment of another human being because what is important, really, is how the person feels in their gut.

And no one, even a brilliant lawyer like you, and I agree that you are such, has the right, it seems to me, to tell someone, really, or question how they feel in their gut. So I think we need to have respect for that issue, even though I think you're right. You bring out some important points about the practical difficulties of this. But

listen, this is not a perfect world. And what it comes down to is human beings and the way they think and the way they feel and what moves them in their soul and in their gut.

So I think that was wrong. Now, having said all that, I want to bring up the diary. The diary, in my view, is being held up by many here as the gospel. I have said from day one I believe the diary is an exaggeration, and I believe—and I think it was interesting when the Chairman opened up that if there was intense pressure, it was inside Mr. Altman. The intense pressure wasn't brought by the people in the room. As far as I can tell, we're grownups. Mr. Altman is a grownup. He's been around the block a few times, as my mother would say. She knew the story. He had been in politics. This is not a child, a public servant who is struggling.

So I don't believe that you could intimidate him and I don't believe that you did. I don't think that you brought intense pressure, and I think it is very important that I say that because I don't want the American people to believe that the White House brought intense pressure.

Maggie Williams said—when was that, today, Mr. Chairman?

The CHAIRMAN. Yes.

Senator BOXER. Or yesterday. Maggie Williams said many hours ago—

Senator BRYAN. Fifteen hours ago.

Senator BOXER. Fifteen hours ago when she expressed to Roger Altman, I don't understand why you have to do that. You're not taking the case anyway. You looked at her and rather critically said, and I'm paraphrasing, Maggie, if that's what you call her—

Mr. NUSSBAUM. I call her Maggie.

Senator BOXER. It's up to Roger.

And Mr. Ickes, who couldn't remember exactly what he said, other people remember him saying, well, Roger, if you're going to do it, do it sooner rather than later. Now, I think it's important to ask you one more time because you now know how I feel. I don't think there is a point in arguing it. We just see it differently.

Mr. NUSSBAUM. Correct, Senator.

Senator BOXER. So we'll respect each other for that. But I think it's important that you please—this is very important for this White House—tell me if you think the Steiner diary is an exaggeration when he says the White House brought intense pressure on Roger Altman on the issue of recusal?

Mr. NUSSBAUM. I think the Steiner diary is an exaggeration when it says that we brought intense pressure on Roger Altman. Mr. Steiner was not present at the meeting. I was present at the meeting. I know what happened at the meeting, and we did not bring intense pressure on Roger Altman.

Senator BOXER. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Moseley-Braun.

Senator MOSELEY-BRAUN. Thank you, Mr. Chairman. I'm sitting here listening to all this, and I've got to tell you I was reminded of nothing so much as the famous Japanese film Rashoman. I wrote down Kurasawa as the director and I know some movie buffs will probably write in and tell me who it really was, but if you re-



member that film, it was a situation in which the same set of activities were perceived differently by the different actors, the different people who were involved. And I think that's what we've run up against here, the difference in perceptions. You saw an employee who had received legal advice that it was not required that he step away from his job, and you insisted that he not back away from it.

Mr. NUSSBAUM. I asked him to reconsider whether he really shouldn't step away.

Senator MOSELEY-BRAUN. That's even better. Mr. Altman, on the other hand, based on his testimony, felt duty bound to continue with his work, albeit as a one man band. Frankly, I think that the confluence of his two jobs, the way the two jobs came together, should have been, but was not, obvious to him, to you and to the Counsel at Treasury, but it wasn't. I think what you're hearing from the Committee today is that this Committee sees an employee with regard to Roger Altman's role. An employee with a potentially—with two potentially conflicting jobs who was so personally associated with the Presidency, in the public mind and ours, that there was no way that he could have avoided the appearance of impropriety or unfairness or partisanship on behalf of a case that involved the President personally.

I mean, I think that's the Rashaman that we have here, and I think it is those irreconcilable differences in perception that this issue is joined. The sadness here, of course, and there have been some harsh words and I don't want to sound like I'm piling on, but I, with my colleagues, concur in their judgment about the recusal decision, the sadness here is that reputations for integrity and legal acumen are hung in the balance when you're talking in a Senate hearing on national television. But is it not fair to say, Mr. Nussbaum, that you gave the best advice that you could under the circumstances as you saw them at the time?

Mr. NUSSBAUM. That's exactly what I try to do. I try to give the best advice and judgments, legal judgment and other judgments, that I can give under the circumstances at the time. I try to do my best.

Senator MOSELEY-BRAUN. Now that you've had a chance to see and hear the other views, the other perceptions, would you change that view now?

Mr. NUSSBAUM. You're not going to like this answer, perhaps.

Senator MOSELEY-BRAUN. That's OK.

Mr. NUSSBAUM. But I've thought about it a lot. I've had occasion, having left the Government, taking a mini-sabbatical, to think about this. I respect the other views. I respect your view, Senator Boxer's view, Senator Kerry's view, the Chairman's view, Lloyd Cutler's view, Lloyd Bentsen's view. I don't agree. I don't agree. I really still maintain my view that if you're not legally or ethically required to recuse yourself, and that includes appearances, then you do your job. You do your duty. Now, that's my position. As a result of that position, I am now back in New York rather than in Washington, but that's my position.

Senator MOSELEY-BRAUN. I have no further questions.

Thank you, Mr. Nussbaum.

Senator DODD. Mr. Chairman?

The CHAIRMAN. Senator Murray.

Senator MURRAY. Thank you, Mr. Chairman. I have listened carefully to my colleagues talk about this issue of recusal because I think it raises a lot of interesting points.

And I can't help but agree with my colleague, Senator Kerry. Sometimes, you've got to look past legal and ethical issues and see public perception and public opinion because we live with that every day. But I find myself sitting here thinking what does that do to us in the future if we factor public perception into every decision? I think one of the reasons we find ourselves sitting here for 5 or 6 solid days, going through questions, is because we had a man who essentially held two jobs, one in Treasury and one in the RTC. He was there because the White House sent a name over to the Senate, and this Committee didn't deal with him. We never got anybody in place. Trying to find somebody to do that job has been extremely difficult.

If we had confirmed a name, any name, Stanley Tate or anybody sent over by the President to head up the RTC and, I think we would ask whoever that person is: Are you too close to Bill Clinton to deal with the Madison Guaranty issue? And I have to ask, is there any Presidential nominee we could put in place who would not have to recuse himself on this as head of the RTC?

Mr. NUSSBAUM. This raises a profound difference I have with so many of you in this room. Just because the President appoints somebody to a position and that person is confirmed by the Senate doesn't mean he can't act with a matter affecting the President or the President's family. In the Silverado case, a George Bush appointee confirmed by the Senate acted with respect to Neil Bush. Congressman Leach, in his letter to Roger Altman on February 3rd when he told him to seriously consider recusing himself, mentioned that fact, recognized that Presidential appointees are not, ipso facto, by virtue of that position, prevented from acting with respect to matters affecting the President or the President's family.

Roger Altman was not, because he was a Presidential appointee, was not disqualified from acting in this matter. The fact that he was a friend of the President didn't disqualify him from acting in this matter. We have ethics rules that deal with these issues here and I'm not arguing with anybody in particular now, we're sort of overriding them because of some greater public relations consideration, political considerations, public perception considerations, whatever these names people are using.

I understand how important those things are politically, and I understand how those things have political effects on people's lives but nonetheless, I don't believe they should override the fundamental principle if a person is not legally or ethically required to recuse himself. And because you're a Presidential appointee doesn't legally or ethically require you to recuse yourself.

Senator MURRAY. I want to ask my friend, Senator Kerry, because, as he pointed out, if we set a legal standard and an ethics standard and also a public opinion standard——

Senator KERRY. Perception.

Senator MURRAY. Public perception standard, could we find anybody to be in that position?

Senator KERRY. If I could supplement the question to Mr. Nussbaum and, look, I don't quarrel with you on any other level, but don't you think Mr. Altman fell into—he's not just a political appointee in the sense—I'm on her time——

Senator D'AMATO. I don't agree. I'll read the whole thing.

Senator DODD. It's important.

Senator MURRAY. I don't believe they're arguing with that, Senator Kerry.

Senator KERRY. They're talking about something else. Just on the question of Mr. Altman, he ran the war room, he had this extraordinary access to the White House, he was a major player in Health Care. So here you have somebody who's a central part of the President's political agenda in a way many people wouldn't separate from the rise or fall of the President himself, particularly the campaign, also. I think you have a very different status than just an appointee who goes off to do his job.

Mr. NUSSBAUM. Senator Kerry, you're making it a very strong argument in this respect, and it really is a close case, maybe a closer case than sometimes I make it sound when I get carried away with my position. But you have to understand what he said to me at that meeting, and it sort of subsumed some of the things you said. He comes into me and he says I am not legally or ethically required to recuse myself. I know that legal or ethical recusal standards take into account relationships and appearances, so he's, in effect, saying to me I've gone to somebody. I've discussed these issues.

I've laid out all the facts, including, I presume, those kinds of things, and I've gotten this advice. Then that triggers my response. Maybe you're speaking with justification or you're saying with justification that I should have examined it more, come to an independent conclusion about this, and maybe you've reached a different conclusion.

Senator MURRAY. Mr. Nussbaum, it's my time that I'm losing here. I think that this is a discussion that this Committee is going to have to have. Fortunately, the RTC is going to go out of existence, I hope in my lifetime, but I do think it's a question that all of us have to ask ourselves. If we have Presidential appointees, is there an ethic bar so high that no one can jump over it and everyone would have to recuse?

Before I lose my time, Mr. Nussbaum, I have to ask you something else and it goes away from this entirely. Having sat here and listened to all kinds of theories about who did what and how awful they were, it seems to me that some people came into this willing to hang somebody before we started and some people are still there. I'm not sure where I am yet, but I have to go back to our very first day of hearings when we discussed Vince Foster's suicide. I know you were not here, but I know that you knew him. And I have to ask you, having left this town, having watched all of this. Vince Foster said something and I would just like to give you an opportunity to comment on it. "Here, ruining people is considered sport." I really would like to hear what you have to say about his observation.

Mr. NUSSBAUM. That's a very hard question to ask me, because I really had great affection and great respect for Vince Foster. He was a marvelous person and a great Deputy. I think the course of

my life was changed by his suicide. I think, to some extent, he was right. I think in Washington, among some people, ruining people is considered sport. But I don't really believe that exists on every level. I really don't agree with Vince in the final analysis. I think there's a lot of it.

There's too much of it, but fundamentally—I said this before the House, to some extent, too—fundamentally, I believe the public service is a high calling. I believe it's a worthy calling. I believe it has certain dangers that go along with it. I believe you should expect those. You should try to deal with those as best you can, but it shouldn't discourage people. I don't want Vince's death, I don't want my experience to discourage people from coming to Washington. I really want people to come and to serve.

Senator MURRAY. And I appreciate that, but I wonder if we set the ethical bar so high, that no one can do any of these jobs?

Mr. NUSSBAUM. I think that's a real problem.

The CHAIRMAN. Thank you, Senator Murray.

Are there any further questions for the witness because, if not, I'm going to excuse the witness. We've got the results of the deposition here with Ms. Hanson. There's been a request that it be read into the record, and I'm going to do that, in its entirety, in one moment.

What I'd like to do, because of the hour of the evening that it is, or the morning, 1:05, I would hope we would not get into a debate on the substance of this tonight. I think nobody has had a chance to read it and digest it. It will be out there in the public arena. We can all have it and take it up tomorrow if there's a need to do so.

Senator BRYAN. Mr. Chairman, may Mr. Nussbaum be excused?

Senator SARBANES. I want to say something, Mr. Nussbaum—

Senator DODD. And I do too, just 2 seconds, but go ahead.

The CHAIRMAN. Senator Sarbanes.

Senator SARBANES. I want to thank Mr. Nussbaum. I think he's raised some very serious questions, very thought provoking, on the recusal issue, and while there's been sharp reaction from many Members here on the Committee, I think if they think about it, the implications of some of what's happening are very serious indeed. You're getting to the point, to take an extreme, a President comes in. He nominates people to office and they have to recuse themselves simply because they're nominated. Or, you know, someone says, well, I met him and we're sort of friends and now there's a tough decision here and I'm recusing myself.

Now, the Altman case may be different, I think, but I think in a sense, it represents the politics of our time. Unfortunately, what's happened is there's a cynicism that's assuming if you have any connection at all, you can't make a tough independent judgment, and I think if we start down that path, it's fraught with very serious implications. I think that you've argued that case very strongly tonight and, I'm frank to say, I think it needs to be given a great deal of thought and attention. I also want to say when the panel was here from the Associate Counsels of the White House Office, they drew virtually uniform praise from Members of the Committee for their forthrightness, for their obvious ability, for their commitment, and for their understanding.

And I think it ought to be noted that those were people you brought into Government. They, in effect, were your people. You're the one who picked them, brought them in, and to the extent that we praised them yesterday, I think it's a reflection upon you this evening.

Senator DODD. Can I just——

Mr. NUSSBAUM. Thank you, Senator.

Senator DODD. I want to pick up and be very brief. I want to associate myself completely with the remarks of my colleague from Maryland. He's terribly perceptive most of the time, if not all of the time, only when he disagrees with me, which is far too frequently I'm afraid, but I also wanted to express my view—maybe we're becoming addicted to this process here late at night, but I think it's an extremely important debate and we have to find a forum in which to conduct it because I think there's a terrible danger in applying a standard that has such rigidity that we defeat the purpose for which the rule was established.

There's also the danger of tyranny. We're raising the bar of refusal to such a level that it has the outcome determined before any consideration is given. The notion that public perception should weigh as heavily as the ethical or legal questions is a frightening thought to me. It may be a bit old-fashioned, but I was taught to believe that in public service, the standard which you use to judge your conduct is you do what's right, even if it's unpopular, even if a good part of your constituency or the public or the press doesn't like it.

It's the standard. Is it right or is it wrong? There have been countless decisions made in the body in which we serve which were terribly unpopular in the hour in which they were made and played a significant and positive role in this country's history. I would hope that as we consider these decisions, it's been said here over and over that too much of what has guided this Administration has been its preoccupation with what the morning headline was going to look like rather than what history might write.

And so, Mr. Nussbaum, I feel far closer to your philosophy, if you will, on this regard, than I do with those who would suggest that public perception is important. My God, we all live with it here, as one of my colleagues said. But we have to be far more diligent in following the rule of what's right if we're going to succeed.

Mr. NUSSBAUM. Thank you, Senator.

The CHAIRMAN. Senator Kerry.

Senator KERRY. Mr. Chairman, I will be very, very brief. I want to make it clear. I had a note to myself and in the course of 7 minutes we get distracted and in our exchange I got distracted, but in no way in my comment when I said I thought you were legally wrong, did I mean to imply, and I say this to my colleagues, that the question you raise is not a legally valid one. I was saying I thought it was legally invalid here. The two reasons I said, because of the "de facto recusal" and because the standard didn't fit to Mr. Altman.

Mr. NUSSBAUM. I understand, Senator.

Senator KERRY. But I do believe the question is, in generic form, absolutely legitimate, and I agree with my colleagues when we have to think out. And the second thing I want to say to you is I

have enormous respect for the gumption and tenacity with which you've sat here and expressed your opinion. It is very refreshing indeed, wonderful to have somebody who believes something and who sticks with it and doesn't simply sweep away.

The final comment is, in no way am I suggesting that we should become—put our finger up and measure where it goes—but there is that other standard above it which you have to measure, which you're going to be tested by. Sometimes we're going to fall on our faces and sometimes we're going to meet it. And I just think it's not an easy one because it's shifting pretty constantly. I have enormous respect for your opinion. We just disagree on that, but thank you.

Mr. NUSSBAUM. And I respect you, Senator, and I thank you very much.

The CHAIRMAN. Mr. Nussbaum, I think it's my sense and the feeling that's been expressed, in part, by each of the three Senators who just spoke and shared by, I suspect, virtually every Senator here, certainly shared by me in terms of respect for you individually. We have a difference of opinion on this and on these facts, but I would not want that to be misunderstood as something personal, other than a disagreement on case facts and on a circumstance. As I said at the outset, you've given very important service to this country on more than one occasion. You deserve great respect for your ability and for your beliefs, and I would not want my earlier comments, which I hold very strongly, to be interpreted in any other way as it relates to the points I've just made.

Mr. NUSSBAUM. Thank you very much, Senator.

Senator D'AMATO. Mr. Chairman, let me say that in the final analysis, everybody is responsible for his or her actions. We're not talking about just one act, an attempt to lay off everything on Bernie. Bernie did it. You know, that would be an easy thing. And so, while there may be a disagreement as it related to your advice, you didn't start the ball rolling. Let's understand. You didn't go out and solicit and say come in. I think the record is quite clear on that. I think no matter how you look at it, the fact is you stated your opinion. Most of us have a disagreement with your opinion on that.

Nobody here, nor any place in the record before, says Bernie went out and started this process as to one of the issues, the recusal issue. So I think that's important to note. I think we are in a very difficult time today in terms of how you make judgments and what powers those judgments. My colleagues, particularly my colleague from Massachusetts, has spoken to it. We are oftentimes press driven. No one wants to admit it. It is a fact of life. Terror strikes in the hearts of powerful Senators and Congressmen when the press can put a spin on something and have someone down on their knees crying. Not publicly, but it happens, so I think we have to take a look at that. And I wish you good luck.

Mr. NUSSBAUM. Thank you.

The CHAIRMAN. Mr. Nussbaum, thank you very much for the time and thoughts and let us excuse you at this time.

I want to now go to the deposition that was taken this evening from Ms. Hanson. We move very quickly to do that so she might have an opportunity to respond to questions, as a result of the viewing of the videotape, and what the words were that were ex-

changed between she and Mr. Altman back at the time of February 24th when they were here testifying. What has been typed up at this hour, because everybody has been working nonstop, we have half of the transcript, which runs 14 pages, but it covers a direct discussion, in detail, of that videotaped moment and it gives very explicitly her view.

I suggested we just make it available to the press and distribute it to Members. It's been suggested by two Senators that it be read into the record. I'm prepared to read it into the record if that's the wish of the Committee. I'll just do it. I'm going to read it in as neutral a fashion as I can. It's 14 pages, shouldn't take too long.

It's the deposition of Jean Hanson. "Whereupon Jean Hanson was recalled for deposition in the above-entitled matter and, having been previously duly sworn, was examined and testified further as follows:" I will parenthetically say we're going to start with a series of names and then the people who then make those comments.

Mr. CODINHA. Let's go right onto the record. Ms. Hanson, thank you very much for returning tonight on such short notice.

Mr. Pitt, I want to thank you for making your client available to us.

Then the examination begins by Mr. Codinha.

Ms. Hanson, my question to you is, focusing your attention on the testimony you have seen, the videotape you have seen, do you recall Mr. Bond's question and Mr. Altman's answer at the hearing?

Answer: Yes.

Question: Describe what you thought when you heard that question and answer, if anything.

Answer: I understood the question and answer to refer to the RTC.

Question: All right. And is that what you were thinking when you heard that question and answer?

Answer: That's what I recall. I don't recall specifically what I was thinking at that particular moment in time.

Question: When you heard that answer, did you think that Mr. Altman's answer was complete, or incomplete, if you had determined that at the time?

Answer: It was accurate to the best of my knowledge.

Question: After that question and answer, if you look at the videotape, and when Ms. Ford is asked the question, when you see Mr. Altman turn and say something to you, and you appear to shake your head, which looks like a negative shake of the head, and Mr. Altman then turns around again, he says something to you and you shake your head, and I can't tell whether you said anything or not.

Mr. Altman has taken a position on what you have said.

What we would like to know today, and what the Senators want to know: To the best of your memory, what did Mr. Altman say to you, and what did you say to him?

Answer: I don't recall Mr. Altman's exact words, but in substance he asked me whether his answer was wrong. And I don't recall what I said to him, but in substance it was that I didn't believe so.

I immediately, if you note on the video, turn then to Ellen Kulka, the General Counsel of the RTC who is seated next to me, and asked her in substance whether she thought the answer was wrong; and I recall that she, in substance that she said she didn't think it was wrong.

Again, I understood all these questions to be asked and answered in the context of the RTC. That's how I understood: The questions related to the RTC and that they were answered in that context.

I will say that at some point here I realized that we hadn't prepared Mr. Altman for this particular—these particular questions, and that there was no question and answer on it. And I also recall at some point having a flash of remembering that I had spoken with Mr. Nussbaum in the fall. I didn't recall the specifics of the conversation or the events surrounding it. I also recall not having a disquieted feeling about Mr. Altman's response to the questions, or any feeling that—a feeling that anything was being withheld. And after the hearings were over I, as I have testified, knew that there were issues/questions that needed to be followed up on.

I don't recall that this was one of them. Although I will say that the following week when Mr. Podesta called Mr. Altman, and Mr. Altman told me that a question

had been raised about his answers to Senator Bond's questions, and we didn't have a transcript so we located Senator Bond's questions on a videotape and transcribed them, and they were only the two:

She now refers to that transcript and she quotes it.

"Senator BOND. How was the White House notified of the referral?

"Mr. ALTMAN. They were not notified by the RTC, to the best of my knowledge.

"Senator BOND. Nobody in your agency, to your knowledge, advised the White House staff that this was going to be a major—this could be a major source of concern?

"Mr. ALTMAN. Not to my knowledge."

Ms. Hanson continues:

When I looked at those two questions, which were the only questions that I had transcribed, out of context, although the answers to the questions were literally correct, I had a concern that in fact the answers were not in the spirit of the questions.

And it was that day, later on that day, that I started my preparation of my questions and answers, trying to refresh my recollection about the events that had occurred in the fall because I knew that the record would have to be supplemented to include that information.

*Question:* I began by asking you what you said to Mr. Altman and what he said to you when you shake your head 'no.'

So if I understand correctly what you have said, it is that when he turned to you, you, by shaking your head, and by his question being in essence 'is my testimony correct,' you were affirming that you believed his testimony was correct?

*Answer:* That's my recollection.

*Question:* OK.

Mr. Pitt, her attorney, speaks next.

Mr. PITT. In the context that she has now described. I mean, that was one of the reasons why we wanted the record to be complete about the whole series of questions.

Ms. HANSON. And that I confirmed that information with Ellen Kulka, as well. I understood, as I stated, the questions to be asked and answered in the context of the RTC.

Mr. Codinha resuming:

*Question:* OK. That brings to mind a question that Senator Sarbanes raised with another witness. That is—or actually it may have been with you—that when you went to the White House on September 29th, did you believe you were representing the RTC or the Justice Department—

Ms. STRAUSS. The "Justice Department"?

Mr. CODINHA. I'm sorry, the Treasury. I have been looking for scope objections all day. [Laughter.]

*Question:* The Treasury.

*Answer:* I believe that I was acting in my capacity as General Counsel of the Treasury.

*Question:* So when you heard—if I understand correctly what you are saying about what is reflected on page 69—when you heard the question and understood it for RTC, you were separating your role as a Treasury Department employee, and that is why you didn't indicate to Mr. Altman at that point that you had had the meeting?

*Answer:* That's correct.

*Question:* Now another thing that we are concerned about in this testimony is that Mr. Altman says that "a week passed before Mr. Podesta's call which alerted me to the fall meetings. Ms. Hanson, Mr. Chairman, then pre-cleared my letter to Senator Riegle which stated I had no prior knowledge of these meetings. She signed off on it. At not one of those times did she suggest—not one of those times did she suggest—that my recollection was faulty." Is Mr. Altman correct in that?

*Answer:* To the best of my recollection, yes.

As I have stated, I didn't recall at the time that the March 2nd letter was written, or prior to the March—between the time of the hearing and the time that the March 2nd letter was sent, I didn't recall that I had spoken with Mr. Altman about the meetings in the fall.

So the letter that was sent on March 2nd was correct to the best of my recollection at the time it was sent.



*Question:* Ms. Hanson, I'm going to ask you this because I know the Senators are going to be very concerned about this distinction that you're making—I'm now going back to what happened at the hearing—the distinction that is being made for how the notification happened, and when Mr. Altman said—let me read exactly what he says. He says, or Senator Bond says:

"Senator BOND. Nobody in your agency to your knowledge advised the White House staff that this was going to be a major—this would be a major source of concern, this notification?" And Mr. Altman says: "Not to my knowledge." If I understand what you said correctly, it's that you were from Treasury when you went over to the White House and therefore Mr. Altman was technically correct because you were a Treasury employee and not an RTC employee?

*Answer:* That's right. I never considered myself to be an RTC employee. So when I thought about the question and understood it to relate to the RTC, I didn't believe that it included me because I always viewed myself as functioning in my capacity as the General Counsel of the Treasury and not in any capacity for the RTC.

*Question:* OK. Again, I know this is going to be a question that is going to come up: Do you consider that that distinction was a distinction with a difference in the way this question was asked? I mean, didn't you understand that the Senators wanted to know how the information got to the White House?

*Answer:* As I've stated, when I heard the question asked and answered, I understood it to be asked and answered in the context of the RTC, which I did not believe included me as the General Counsel of the Treasury. However, as I've also said, when I transcribed the two questions the following Tuesday on March 1st, and I looked at them out of context and considered them, I was concerned that, although the answers were technically correct—I continued to think the answers were technically correct—I did not think the answers to the questions answered the spirit of the question, and in fact, I believe that that was what the Senators were looking for, the information as to how the White House was notified. And that's why I thought, clearly, that the record was going to have to be supplemented to make that clear.

*Question:* And when you did that—and I believe you said this was around March 1st?

[Pause.] The Podesta call, I think we have narrowed down, happens around March 1st. Podesta says it happens March 1st. Altman seems to say around March 1st.

*Answer:* That's my recollection.

*Question:* Did you tell Mr. Altman that, that his answer was no longer accurate?

*Answer:* I recall that there was a discussion about it. I don't recall—

*Question:* A discussion between whom?

*Answer:* I don't remember who was there. I know that Michael Levy was there.

*Question:* You were there.

*Answer:* I was there.

*Question:* Michael Levy was there.

*Answer:* Mr. Altman was there. I don't remember who else. I know—

*Question:* Where was "there"?

*Answer:* In Mr. Altman's office.

*Question:* And who called the meeting together, this group of people together?

*Answer:* I don't recall.

*Question:* As best you can recall, what was the substance of the conversation that took place?

*Answer:* The conversation related to whether—Mr. Podesta's statement that there was concern over Mr. Altman's answers, what—what the response to Mr. Podesta's question was. And there was a discussion as to whether it needed to be supplemented, the record needed to be supplemented.

*Question:* Who was that discussion between?

*Answer:* The participants in the meeting. I know that there was—I recall that there was a view expressed that the answers were correct, technically correct, because it related to the RTC and was answered in that context.

As I stated, I was concerned that, although, even if technically correct, that the answers did not answer the spirit of the question, which was why, as I have stated, I started working on my questions and answers to recall—to refresh my recollection on the events that had occurred, because I knew that the record had to be supplemented with the information.

*Question:* Who took the position? Of the three people at the meeting, who took the position that the answers were "technically correct"?

*Answer:* I believe that there were more than three people at the meeting. I don't recall who else was there. I don't recall. I believe that, if I recall correctly, Mr. Levy took that position, but I can't recall what the prevailing view was. As I've stated,

I knew and I had a concern that the answers did not answer the spirit of the question and knew——

*Question:* And did you voice that view?

*Answer:* I believe I did.

*Question:* Well can you try a little more? You believe you did. What do you base that on? Do you have a memory of saying something?

*Answer:* I recall that I did.

*Question:* And who did you address that to? The group in general, or Mr. Altman?

*Answer:* The group in general, to my recollection.

*Question:* To the best of your memory, what did you say to the group?

*Answer:* I don't recall. The substance was that the answers, although technically correct, didn't answer the spirit of the question.

*Question:* Did this group discuss the fact that Mr. Podesta of the White House had called and raised a number of concerns with Mr. Altman's testimony?

*Answer:* The only issue that I recall being told was raised by Mr. Podesta was Mr. Altman's answers to Senator Bond's questions. I do not recall hearing that Mr. Podesta raised any other issues with Mr. Altman.

*Question:* Was Mr. Altman an active participant in these discussions?

*Answer:* I don't recall. They took—the discussion took place in his office.

*Question:* Do you recall him saying anything? Did he agree with anybody——

Senator DODD. The question above that, was Mr. Altman an active participant.

The CHAIRMAN. I just read that.

Senator DODD. OK. I'm sorry.

The CHAIRMAN. Let me pick up with the top of 14.

*Question:* Was Mr. Altman an active participant in these discussions?

*Answer:* I don't recall. They took—the discussion took place in his office.

*Question:* Do you recall him saying anything? Did he agree with anybody? Did he disagree with anybody? Can you recall at all what he said?

*Answer:* I don't recall.

*Question:* Do you recall having a strong feeling as to whether the record should be corrected to reflect what you've told us here tonight?

*Answer:* I recall having a strong feeling that the record was going—was going to require supplementation. As I stated, at that point I did not have a transcript and had not had an opportunity to review the transcript in full. But it was my view that the record was going to have to be supplemented. That's my recollection.

*Question:* And when Mr. Altman said that you pre-cleared his letter and signed off on it, did you consider the letter that he sent—I assume this must be the March 2nd letter—to be the letter that corrected the statements that you just told us about? I will show you the letter.

Mr. PITT. It is on page 336 of the printed hearings.

Ms. HANSON. I understood this letter to be designed to address a specific issue. That was, to answer Senator Bond's question of who notified the White House. And that was the reference to two conversations that took place between Treasury staff and White House personnel, one of those conversations being my conversation with Mr. Nussbaum.

As I stated, on March 3rd there was an article that appeared in The Washington Post that described the two fall meetings. This letter was designed and intended to put the Committee on notice of these two meetings, but not, in my view, to completely supplement the record as it related to those two meetings because it didn't have the specific information to respond to Senator Bond's question. That remained to be completed in full in response to a review of the entire record.

Mr. Codinha resuming:

*Question:* And then on March 3rd there is another letter. Did you also review and pre-clear that letter?

*Answer:* I reviewed the letter of March 3rd.

*Question:* And was that meant to supplement the record on the Bond question?

*Answer:* [Pause.] On which question?

*Question:* On Senator Bond's question about the contacts and elaborate and expand the record as you just discussed was the intention of you and Mr. Altman to do?

Ms. STRAUSS. I am confused about what question we are talking about. What question by Senator Bond and the contacts?

Mr. CODINHA. The one we played——

Ms. STRAUSS. On how the White House was notified of the criminal referrals?

Mr. Codinha resuming:

*Question:* Yes.

*Answer:* The March 3rd letter?

*Question:* Yes.

*Answer:* No.

*Question:* And the March 11th letter, did you review and sign off on that one?

*Answer:* No.

*Question:* Did you ever attempt to supplement the record any more than you've described today?

*Answer:* No. As I've stated, I expected there to be a full review of the transcript. I had understood from Mr. Harris on two occasions that there were going to be additional questions that were going to be furnished. I expected that both the record would be reviewed and additional questions received, and the record completed in full quickly. But because of the intervening events, that didn't happen.

*Question:* And the "intervening events" you're describing are the Grand Jury's notification of subpoena?

*Answer:* In particular, yes. And also Secretary Bentsen's commencement of—

*Question:* The OGE—

*Answer* [continuing]: for the OGE investigation.

Mr. CODINHA. I have no further questions. Joe, do you want to inquire?

And I take it that's the entire transcript. There's more transcript, but that's what we have transcribed at this time.

Senator BOXER. Mr. Chairman, as the person who really asked the staff to do this, I want to say I'm extremely grateful to the staff for both sides, Legal Counsel, the staff, the court reporters because I think it's very important for Mr. Altman and for Ms. Hanson that this be put in the record tonight, and I do appreciate, and I want to say to Mr. D'Amato thank you, and thank you, Mr. Chairman, for doing this. A human life is at stake here in a lot of ways.

Senator D'AMATO. I am pleased we put so much into this. I don't think we have to read it all because the Chairman went to extraordinary lengths, but I would hope that he would have the balance entered in because I think it gives a full picture and I don't intend to editorialize.

Senator BOXER. I so move we put the balance in the record.

The CHAIRMAN. Absolutely.

Senator KERRY. I want to ask the Counsel whether the question was asked why the letter didn't mention future information?

Senator DODD. I'm sorry, John?

Senator KERRY. Did the letter—was the question asked about—Codinha, all the questions that were asked were right here? I thought more was to come. Codinha, I can't recall what he says.

The CHAIRMAN. We'll have to see that tomorrow morning. We've gone as far as we can go this evening. I think we've had a full day by any measure, and I want to thank the staff particularly for their hard work and for the quick turnaround on this deposition.

The Committee stands in recess. We'll resume tomorrow morning at 9:30 a.m. in this room.

[Whereupon, at 1:40 a.m., the hearing was adjourned, to reconvene at 9:30 a.m., on Friday, August 5, 1994.]

[Prepared statements, response to written questions, and additional material supplied for the record follow:]

**STATEMENT OF THOMAS P. McLARTY, III****United States Senate Committee  
on Banking, Housing and Urban Affairs****August 3, 1994**

Mr. Chairman, Mr. D'Amato, and members of the Committee, my name is Mack McLarty. I serve as counselor to the President. As you know, it was my privilege to serve the President as his Chief of Staff from his inauguration until June seventeenth of this year.

I testified last week before the House Committee on Banking, Finance and Urban Affairs. I provided a written statement to the House Banking Committee, and I request that I be permitted to make that statement part of the record here. I would like simply to summarize that testimony so we can move quickly to your questions.

The White House respects the role of this Committee and its oversight responsibility. President Clinton instructed all White House employees to cooperate fully with your inquiry and to appear voluntarily whenever asked to do so.

As you know, a number of independent authorities have reviewed the contacts between Treasury and the White House concerning Madison Guaranty: the Special Counsel, the grand jury, the Office of Government Ethics, and the White House Counsel. They have all determined that the contacts violated no laws.

The Office of Government Ethics and the White House Counsel, Lloyd Cutler, examined the contacts in light of ethical standards, which are tougher than legal ones. I specifically asked Mr. Cutler to do that and to do so using hindsight. Both he and the Office of Government Ethics concluded that no one acted unethically.

Even if I am repeating the obvious, I want to make sure that

Congress and the American People understand a critical point: no one attempted to influence the RTC's decision on whether, or when, to bring claims against individuals in connection with the failure of Madison.

As we apply hindsight to these events, however, it is obvious to all of us that some of those contacts were unwise. The White House has already implemented Mr. Cutler's suggestions. They will assure that in the future all contacts about ongoing investigations will be limited to White House Counsel and that the possibility of misunderstanding will be eliminated.

I want to emphasize, as I did before the House Committee, the importance of keeping the Madison\Whitewater matter in perspective. The period the Committee is reviewing extends roughly from the end of September to the beginning of March. During that period, the White House was extraordinarily busy and productive, even though some time of some employees was taken responding to various Whitewater inquiries and controversies.

Specifically, we concluded the North American Free Trade Agreement and lifted sanctions against South Africa. We reinstituted the Super 301 Trade Powers. We obtained a GATT agreement, and the President convened the APEC conference in Seattle, and brought our G-7 allies to Detroit for a major conference on jobs.

At the same time, the President was traveling to Europe, bringing his vision of leadership to NATO with the Partnership for Peace, and holding major talks with President Yeltsin and other Russian leaders.

On the heels of last year's economic legislation, we set out to improve the social fabric of our country. Working closely with the Congress, we enacted major educational reform, including Goals 2000. As you know, the President introduced major health and welfare reform legislation our country so badly needs. After getting the Brady Bill passed, we are on the threshold of a sweeping crime bill. And our 1995 budget is moving forward in an orderly and timely manner.

In short, the focus on Whitewater here ought not to create the impression in anyone's mind that the White House had nothing to do during this period but deal with that subject. The White House staff had a lot to do and, if I do say so myself, they did it well.

I also want to emphasize that the people who work at the White House are the finest public servants with whom I have ever worked. It was a privilege for me to be their Chief of Staff. None of us is perfect, and none of us ought to assert that we are. But even if we second guess a particular judgment, we can never second guess their integrity and good faith.

I am confident that this Committee, like the Special Counsel, the Office of Government Ethics, and White House Counsel, will conclude that no one did anything wrong -- that we served our President and our country well -- and that we need to get back to work.

STATEMENT OF  
THOMAS F. McLARTY, III

U.S. House of Representatives  
Committee on Banking, Finance  
and Urban Affairs

July 28, 1994

Mr. Chairman and Members of the Committee, my name is Mack McLarty. As you know, I am at this time Counselor to the President. Before I joined the administration, I spent the better part of three decades in the private sector. I was Chairman of the Board and Chief Executive Officer of Arkla, one of our nation's largest natural gas companies, and I ran a five generation old family business.

As you also know, it was my privilege to serve the President as his Chief of Staff from the date of his inauguration until June seventeenth. That period includes the events which are the subjects of these hearings and which Mr. Cutler discussed.

I should say at the outset that President Clinton was determined that the White House cooperate fully with your inquiry, as we did with Mr. Fiske, and that relevant witnesses would appear voluntarily whenever asked to do so. We respect the role of this Committee. We are here today to answer your questions to the best of our ability.

When Lloyd Cutler arrived at the White House, I asked him to review the contacts between Treasury and the White House concerning Madison Guaranty and to report to me and the President on their propriety. Although we appreciate the legal conclusions rendered by the Special Counsel last month, it was also important to us that Mr. Cutler review and render judgments on the contacts using

ethical standards, which are tougher than the legal ones, and do so in hindsight, as difficult and harsh as that sometimes is. We understand that our obligations in the White House are to do our work consistent not only with legal standards but with high ethical and performance standards as well.

The people sitting with me at this table are my colleagues and my friends. But they are far more than that. They are very talented people who work long hours out of dedication to their country. They are also men and women for whom ethics, integrity and honor are not just words. The standards they set for themselves are, as they should be, the highest in the Nation. I am proud to be here with them, as I have been proud to be their Chief of Staff.

Mr. Cutler's report, as well as the report of the Special Counsel, make a number of points that are important for the Congress and the American people to understand about the so-called Whitewater matter and its handling by the White House staff.

First, nothing happened. No one in the White House attempted in any way to influence the RTC's decision on whether to bring claims against individuals in connection with the failure of Madison. As I understand it, that decision is still pending and will be made in due course.

Second, no one in the White House violated any law.

Third, no one in the White House violated any ethics rule or regulation.

For me, these were not surprising conclusions, but it is important for the public to know the facts.



I certainly concur with Mr. Cutler's observation that contacts with agencies relating to investigations are best handled through the White House Counsel, who also functions as the White House ethics officer. The President and his staff can and do look to Counsel to determine what contacts can occur, how they should occur, and who should know about them.

I also agree with Mr. Cutler that, especially with the benefit of hindsight, it would have been better if some of these contacts had not occurred. I also agree with the changes he has made to prevent them from occurring in the future.

Finally, Mr. Chairman, I would like to help this Committee keep the Madison\Whitewater matter in perspective.

The Committee is reviewing a period extending roughly from the end of September to the beginning of March. I would like you to know just some of the things the President and his staff were doing for the country during this period.

It was a busy and productive period for the White House, the Congress, and an important one for the American people. We concluded the North American Free Trade Agreement and lifted sanctions against South Africa. We reinstituted the Super 301 Trade Powers. We obtained a GATT agreement, and the President convened the APEC conference in Seattle, and brought our G-7 allies to Detroit for a major conference on jobs.

At the same time, the President was traveling to Europe, bringing his vision of leadership to NATO with the Partnership for Peace, and holding major talks with President Yeltsin and other Russian leaders.

On the heels of last year's economic legislation, we set out to improve the social fabric of our country. Working closely with the Congress, we enacted major educational reform, including Goals 2000. As you know, the President introduced major health and welfare reform legislation our country so badly needs. After getting the Brady Bill passed, we are on the threshold of a sweeping crime bill. And our 1995 budget is moving forward in an orderly and timely manner.

In other words, the President and his staff, including all the people sitting here, had a lot to do and they did it exceedingly well. While some of them spent time responding to Whitewater, all of them were engaged full time in helping the President accomplish things of real importance.

We are happy to answer your questions. Indeed, in many respects, we welcome them.

None of us is perfect, Mr. Chairman, and hindsight is always 20-20. But, at the end of the hearing, we are confident that you will conclude, as Mr. Fiske, Mr. Cutler, and the Office of Government Ethics have, that no one did anything wrong -- that we served our President and our country well -- and that now we need to go back to work.

STATEMENT OF

MARGARET A. WILLIAMS

ASSISTANT TO THE PRESIDENT AND  
CHIEF OF STAFF TO THE FIRST LADY

BEFORE THE COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS  
U.S. SENATE

AUGUST 3, 1994

**STATEMENT OF MARGARET A. WILLIAMS**

I AM MARGARET A. WILLIAMS, ASSISTANT TO THE PRESIDENT AND CHIEF OF STAFF TO THE FIRST LADY. I AM GRATEFUL TO CHAIRMAN RIEGLE AND THE MEMBERS OF THE SENATE BANKING COMMITTEE FOR THE OPPORTUNITY TO ADDRESS YOU CONCERNING MY VERY LIMITED CONTACT WITH THE TREASURY DEPARTMENT IN CONNECTION WITH THE WORK OF THE RESOLUTION TRUST CORPORATION. THAT CONTACT WAS CONFINED TO A MEETING ON FEBRUARY 2ND OF THIS YEAR AND AN ENCOUNTER WITH DEPUTY TREASURY SECRETARY ROGER ALTMAN SEVERAL DAYS LATER.

BUT PRIOR TO MY TESTIMONY, I THINK THE COMMITTEE MIGHT FIND IT HELPFUL TO KNOW A LITTLE ABOUT MY PROFESSIONAL BACKGROUND AND MY DUTIES AND RESPONSIBILITIES AS ASSISTANT TO THE PRESIDENT AND CHIEF OF STAFF TO THE FIRST LADY.

MY APPOINTMENT TO PRESIDENT CLINTON'S STAFF CAME AFTER A BRIEF STINT WITH THE CLINTON-GORE CAMPAIGN WHERE I SERVED AS MRS. CLINTON'S COMMUNICATIONS DIRECTOR.

I JOINED THE STAFF OF THE CHILDREN'S DEFENSE FUND IN 1985 AS SENIOR MEDIA ANALYST RESPONSIBLE FOR DEVELOPING AND OVERSEEING AN ADVERTISING CAMPAIGN ON TEEN PREGNANCY PREVENTION. IN 1988 I BECAME CDF'S DIRECTOR OF MEDIA AFFAIRS AND SERVED ON CDF'S SIX-MEMBER MANAGEMENT COMMITTEE. PRIOR TO CDF, I WORKED FOR THE CENTER ON BUDGET AND POLICY PRIORITIES, DEVELOPING A MEDIA RELATIONS PROGRAM FOR THAT ORGANIZATION. I HAVE SERVED AS A

-2-

CAMPAIGN PRESS SECRETARY FOR A NATIONAL AND CONGRESSIONAL CAMPAIGN AND HELD A NUMBER OF MEDIA RELATED JOBS.

I HOLD A MASTER'S DEGREE FROM THE ANNENBERG SCHOOL OF COMMUNICATIONS AT THE UNIVERSITY OF PENNSYLVANIA AND A BACHELOR'S DEGREE IN POLITICAL SCIENCE AND URBAN STUDIES FROM TRINITY COLLEGE IN WASHINGTON, D.C.

AS ONE OF SEVENTEEN ASSISTANTS TO THE PRESIDENT, I PARTICIPATE, AS DIRECTED BY THE CHIEF OF STAFF TO THE PRESIDENT IN MANAGEMENT, ISSUES, AND COMMUNICATIONS MEETINGS AND WORK GROUPS.

AS CHIEF OF STAFF TO THE FIRST LADY, I MANAGE, DIRECT AND ADVISE A STAFF OF THIRTEEN WHO SUPPORT THE ACTIVITIES OF THE FIRST LADY. THOSE AREAS INCLUDE POLICY, PRESS RELATIONS, WHITE HOUSE EVENTS AND SOCIAL ACTIVITIES, SCHEDULING AND CORRESPONDENCE. BECAUSE OF MRS. CLINTON'S INVOLVEMENT IN HEALTH CARE POLICY, I SPEND A GOOD DEAL OF TIME FACILITATING SELECTED HEALTH CARE ADMINISTRATIVE AND POLICY ISSUES ACROSS WHITE HOUSE DEPARTMENTS AND THE CABINET.

LATE LAST YEAR, THE NUMBER OF WHITEWATER PRESS QUESTIONS BEGAN TO INCREASE AND MY STAFF WAS REQUIRED TO SPEND MORE AND MORE TIME TRYING TO RESPOND TO THOSE INQUIRIES. LET ME MAKE IT CLEAR THAT I WAS NOT INVOLVED IN THE LEGAL REPRESENTATION OF THE PRESIDENT

-3-

OR MRS. CLINTON. MY ACTIVITIES WITH REGARD TO WHITEWATER GENERALLY INVOLVED ADDRESSING MANAGEMENT AND INFORMATION CONCERNS RELATED TO OVERWHELMING MEDIA INTEREST IN THE MATTER.

I MADE A CONSCIOUS DECISION THAT I AND OTHER MEMBERS OF THE FIRST LADY'S STAFF WOULD NOT USE OUR TIME DISCUSSING WHITEWATER WITH MRS. CLINTON UNLESS WE WERE TRYING TO OBTAIN FACTS TO ANSWER PRESS INQUIRIES -- FACTS WHICH COULD NOT BE FOUND ELSEWHERE. I BELIEVED THAT OUR PRIORITY WAS HEALTH CARE AND THAT WE COULD KEEP OUR FOCUS AND HELP MRS. CLINTON KEEP HER FOCUS BY USING THE TIME WE HAD WITH HER ON HEALTH CARE AND ON HER MANY OFFICIAL AND SOCIAL OBLIGATIONS.

LET ME NOW ADDRESS MY INVOLVEMENT IN THE MEETING OF FEBRUARY 2, 1994. THE MEETING WAS PLACED ON MY CALENDAR BY MY ASSISTANT. SHE NOTED IN THE ENTRY THAT MR. MCLARTY, THEN CHIEF OF STAFF TO THE PRESIDENT, WANTED ME TO ATTEND A MEETING REGARDING THE STATUTE OF LIMITATIONS IN HIS OFFICE. THIS WAS THE ONLY INFORMATION I HAD ABOUT THE MEETING PRIOR TO JOINING IT.

I HAD NO DISCUSSIONS WITH MR. ALTMAN ABOUT THE ISSUE RAISED AT THE MEETING PRIOR TO THE MEETING, NOR DID I HAVE ANY CONTACT WITH ANYONE AT THE TREASURY DEPARTMENT CONCERNING THE SUBJECT OF THIS MEETING PRIOR TO IT BEING HELD.

-4-

I JOINED THE FEBRUARY 2ND MEETING IN PROGRESS. MR. ALTMAN, WITH WHOM I HAD PREVIOUS CONTACTS AS A MEMBER OF THE ADMINISTRATIONS'S HEALTH CARE TEAM, WAS SPEAKING TO THE ASSEMBLED GROUP.

AS I RECALL, MR. ALTMAN WAS EXPLAINING A PROCESS BY WHICH THE RESOLUTION TRUST CORPORATION'S STAFF WOULD PRESENT TO MR. ALTMAN A RECOMMENDATION AS TO WHETHER OR NOT TO SEEK A WAIVER OF THE STATUTE OF LIMITATIONS FROM THE PRESIDENT AND MRS. CLINTON IN CONNECTION WITH THE RTC'S INVESTIGATION OF AN ARKANSAS BANK. THE SIGNIFICANCE OF THIS FOR MY OFFICE WAS THAT IF AND WHEN A WAIVER WERE SOUGHT IT WAS SURE TO GENERATE A NEW WAVE OF PRESS INQUIRIES WHICH MY OFFICE, IN CONJUNCTION WITH THE REST OF THE WHITE HOUSE, SHOULD BE READY TO RESPOND.

MR. ALTMAN WENT ON TO EXPLAIN THAT HE MIGHT NOT BE THE OFFICIAL TO WHOM HIS WAIVER ISSUE WOULD BE PRESENTED. IN THIS CONTEXT HE RAISED THE ISSUE OF RECUSAL FROM THE PROCESS HE WAS DESCRIBING. HE THEN EXPLAINED THAT IF HE RECUSED HIMSELF, A MEMBER OF THE RTC STAFF WOULD MAKE THE FINAL DECISION. HE ALSO STATED THAT IN ANY CASE, IF HE DID NOT RECUSE HIMSELF HE INTENDED TO FOLLOW THE RTC STAFF RECOMMENDATION, WHATEVER IT MIGHT BE. I TOOK HIM TO MEAN THAT HE DID NOT SEE ANY NEED TO OVERRULE THE RTC STAFF AND THAT THEY WOULD DECIDE THE PROPER WAY TO DISCHARGE THEIR DUTIES.

-5-

I THEN EXPRESSED MY PERSONAL REACTION TO WHAT MR. ALTMAN HAD SAID, QUESTIONING WHY HE WOULD RECUSE HIMSELF IF HE INTENDED TO FOLLOW THE STAFF RECOMMENDATION. IT SEEMED TO ME BY ACCEPTING THE STAFF RECOMMENDATION, NO ONE WOULD CHALLENGE HIS INTEGRITY. I RECALL MR. NUSSBAUM RESPONDING TO MY STATEMENT BY SAYING IT WAS A DECISION THAT MR. ALTMAN WOULD HAVE TO MAKE.

I DO NOT HAVE A CLEAR RECOLLECTION OF THE REST OF THE MEETING. IT LASTED FOR APPROXIMATELY 45 MINUTES. I LEFT THE MEETING WHEN IT WAS OVER. I TOOK NO ACTION OTHER THAN TO MAKE A MENTAL NOTE TO BE ALERT TO EVENTS ON THIS ISSUE AS THEY UNFOLDED.

SEVERAL DAYS AFTER THE MEETING ON FEBRUARY 2ND, I RECEIVED A CALL FROM MR. ALTMAN TELLING ME THAT HE HAD DECIDED NOT TO RECUSE HIMSELF AND ASKING IF I COULD GATHER A FEW WHITE HOUSE STAFF MEMBERS SO HE COULD MAKE HIS ANNOUNCEMENT. I DO NOT RECALL IF MR. ALTMAN SPECIFIED THE STAFF MEMBERS; HOWEVER, I DID CALL THE WHITE HOUSE COUNSEL'S OFFICE AND REACHED MR. NUSSBAUM OR MR. EGGELSTON (I CAN'T RECALL WHICH). I CALLED MR. ICKES AND MR. STEPHANOPOULOS. MR. ALTMAN STOPPED BY MY OFFICE IN THE WEST WING SHORTLY THEREAFTER AND SPOKE BRIEFLY TO THE INDIVIDUALS WHO HAD GATHERED IN MY OFFICE AND HURRIED AWAY TO ANOTHER APPOINTMENT.

THAT CONCLUDES MY PREPARED REMARKS AND I WELCOME ANY QUESTIONS THE COMMITTEE MIGHT HAVE.



STATEMENT OF HAROLD ICKES  
ASSISTANT TO THE PRESIDENT AND DEPUTY CHIEF OF STAFF

Before the  
U.S. Senate Committee on Banking,  
Housing and Urban Affairs

August 4, 1994

Mr. Chairman, and Members of the Committee, my name is Harold Ickes. I serve as Assistant to the President and Deputy Chief of Staff. I come before you today to inform you, and the American people, about my knowledge of the facts concerning contacts between the White House and Treasury Department officials related to Madison Guaranty Savings & Loan.

I want to thank you for this opportunity to address some of the concerns that have been raised about these contacts. I firmly believe my conduct in this matter was legal, ethical and proper.

Let me briefly highlight for you the events relating to my involvement in these matters. In so doing, I ask you to remember that my days, like yours, are long and busy; that there were many other matters that I was dealing with at the time; and that it is hard, months later, to separate what I knew at the time the events occurred from what I also learned from press accounts and public discussions of these matters.

I joined the White House staff in January of this year. I am primarily responsible for managing the President's health care initiative, but for a period of time when I first came to the White House, I was responsible for pulling together a working group to coordinate the White House's response to press inquiries concerning what is generically known as "Whitewater."

In late January and early February, as you will recall, Republican members of Congress, including members of this Committee, began making an issue about the expiration of the statute of limitations with respect to the Resolution Trust Corporation's ("RTC") inquiry into Madison. On January 11, eight Republican lawmakers called upon the RTC to enter into tolling agreements with the Clintons and other interested parties, to "allow time for a complete and independent investigation and permit the orderly operation of the legal and judicial processes."

On February 1, 1994, Senator D'Amato, on the Senate floor, stated that the "clock was running" on the RTC's Madison inquiry, and urged the RTC to immediately seek tolling agreements "to stop the clock and assure that there is time for a thorough, impartial investigation of the facts." On that same date, Roger Altman wrote Senator D'Amato to assure him that the "RTC is

mindful of the impending February 28" statute of limitations with respect to Madison, and stated that the RTC would vigorously pursue appropriate remedies, including tolling agreements.

On this same day, Mr. Altman asked to meet with myself and others at the White House, which we did on February 2nd. Thus, this meeting took place in the context of the highly publicized statements on the Senate floor and elsewhere, that I have just described.

As I recall, for most of the meeting, Mr. Altman made a presentation about the procedural options generally available to the RTC in cases such as Madison, in view of the statute of limitations deadline -- the same options that were the subject of the statements on the floor of the Senate. My impression from what Mr. Altman said was that the statute was likely to expire before a full investigation into the Madison matter could be completed -- and that this could result in a situation in which the RTC would have three options: (1) the RTC could seek a tolling agreement; or (2) failing that, the RTC could file a protective claim to preserve its ability to fully complete its investigation; or, finally, (3) the RTC could allow any potential claims to lapse.

In my deposition before Senate Committee counsel on July 24, 1994, I was asked to recount my recollections of the February 2nd meeting. I was twice denied the opportunity by Committee Counsel to review my notes of the meeting before responding to that question. I stated that I could not recall the words that were spoken at the meeting, but that my impression of what Mr. Altman said -- the gist of it -- was that "the investigation probably would not be concluded and that a determination could not be made by the RTC's general counsel as to whether there was a basis for a civil claim until after the expiration of the statute of limitations." By this, I meant that there probably would not be sufficient time to complete fully the Madison investigation, in order to permit the RTC to make a judgment about whether the merits of the case justified pursuing a civil suit.

My understanding was based on the discussion of the three options, as well as the public statements about these issues. As I understood it, the RTC probably would need more time to complete a thorough investigation and an internal review, before making a final determination as to whether there were sufficiently meritorious claims to justify committing agency resources to pursuing a full-blown lawsuit. But I also understood that the RTC

could file a protective lawsuit to preserve future claims, if there were not a tolling agreement.

It has been suggested, based on my deposition, that I did not believe the RTC would be in a position to file such a protective suit by the February 28th deadline. This is simply not so. To the contrary, I understood that the RTC was in a position to file such a protective claim, if it did not obtain tolling agreements. This is corroborated by two sources.

First, it is corroborated by my notes of the February 2nd meeting, which were not shown to me at my deposition. Those notes refer to the three options outlined above, including the option, "commence litigation to preserve claim." I have attached a copy of those notes to this statement, for the record.

Second, RTC's General Counsel Ellen Kulka testified before this Committee earlier this week that she advised Mr. Altman that the RTC would not have fully completed its investigation by the deadline, but that it would be able to file a protective claim, if necessary, to preserve its options. Ms. Kulka testified that she told Mr. Altman that "we would do what we could to file the complaints we need to file, [and] amend them later if further discovery after the date made it appropriate."

Ms. Kulka further testified that she "clearly told Mr. Altman that we would put ourselves in a position to do the very best we could and we would be able to file complaints."

Thus, what Ms. Kulka reported to Mr. Altman, just prior to our February 2nd meeting, was consistent with what I took away from that meeting -- that while the agency would probably need more time to do a thorough investigation and make a final determination, it would be able to file a protective lawsuit to preserve its right to proceed.

As I stated in my Senate deposition, both the questions I asked and the matters discussed by Mr. Altman were procedural, not substantive in nature. The information communicated by Mr. Altman did not strike me then, and does not strike me now, as being secret or confidential. Nor did Mr. Altman or his general counsel, who was present at the meeting, state that this information was confidential. Indeed, I was under the impression that the issues flagged by Mr. Altman on February 2nd were already a matter of public debate.

Moreover, because it was my understanding that the RTC could file a protective suit, I would have had no reason to inform either the President or Mrs. Clinton

that there was no need for them to enter into a tolling agreement -- and I am confident that I made no such suggestion to either of them. In fact, to my knowledge, the President and Mrs. Clinton were not asked to sign a tolling agreement. I remind you that just 10 days after the February 2nd meeting, the President signed into law a bill extending the statute of limitations until the end of 1995. Once that happened, the deadline for any decision concerning Madison -- and the procedural options we discussed at the February 2nd meeting -- were no longer of any relevance.

Toward the end of the February 2nd meeting, Mr. Altman also stated that he was considering recusing himself from the Madison matter. I, and others present, inquired as to why he was considering recusal, and to the best of my recollection, he said it was because he was a personal friend of the President's. I am not an expert on such issues, and I think I expressed my view that this did not appear to me to necessitate his recusal. Others present expressed similar views. But we certainly conveyed to Mr. Altman that the decision was entirely up to him.

At the close of the meeting, Mr. Altman indicated that he would further consider the issue and let us

know what he decided. Within a day or two, he informed me that he had decided not to recuse himself.

At all times, I viewed the February 2nd meeting as wholly appropriate. Mr. Altman initiated the meeting. There were counsel present from both the Treasury Department and the White House, who never suggested that there was anything inappropriate about the meeting.

The expiration of the statute of limitations with respect to Madison was a matter of public debate. While opinions were expressed on the recusal issue, the bottom line is that the decision was Mr. Altman's to make. Under these circumstances, I believe the meeting comported with all applicable ethical and legal standards. Independent Counsel Robert Fiske, a Republican, has found that no laws were violated by this meeting, and White House Special Counsel Lloyd Cutler and the Office of Government Ethics have confirmed that this meeting violated no ethical standards.

Following the events of early February, to the best of my recollection, the next time that I had a discussion with Mr. Altman concerning these matters was on February 23rd, the evening before he testified before the Senate Banking Committee. I don't recall the specifics of the conversation, but generally, I recall Mr. Altman



informing me that he was considering, either before or as part of his testimony, announcing his recusal from the Madison matter, and he wanted to know if I had any thoughts on that. I believe I asked him whether any circumstances had changed since early February that would cause him to change his prior decision not to recuse. He said they had not. I recall telling him that it was entirely up to him, but if I had any other thoughts, I would get back to him.

He asked me to call him later that evening when he returned from an event outside the office. Rather than wait, I phoned Josh Steiner a short while after my conversation with Mr. Altman. I repeated what I had discussed with Mr. Altman and asked Mr. Steiner to convey to Mr. Altman that I had no further thoughts on the subject, and that it was entirely up to him whether to announce his recusal the next day.

During his testimony on the 24th of February, Mr. Altman did not say he was going to recuse himself from the Madison matter. As you may recall, the news accounts the day after Mr. Altman's testimony focused on his statement at that hearing that he had met with White House officials in early February to discuss the statute of limitations issue with respect to Madison. As a

result, the White House was getting many press inquiries about the issue of contacts with Mr. Altman, as well as the fact that he had not recused himself despite congressional demands to do so, and we were attempting to respond to those inquiries.

At some point during the afternoon of February 25, George Stephanopoulos informed me that he had heard that Mr. Altman had recused himself from the Madison matter, and that he had done so in the course of a conversation with the editorial page editor of the New York Times, without notifying the White House in advance of his decision. Mr. Stephanopoulos and I called Mr. Altman immediately to confirm if that were true. Mr. Altman confirmed these events, and we expressed surprise that he had chosen to announce his recusal to a newspaper editor. We had been caught off guard, especially because we had been fielding questions from the press on these issue.

I am aware that Mr. Steiner's diary reflects that we indicated to Mr. Altman that the President was "furious" about these events. As far as I know, Mr. Steiner was not a party to that phone call. I do not recall making such a statement, and I would not have had any basis for making such a statement because I had not spoken with the President between the time I learned that

Mr. Altman had recused himself, and the time when we called Mr. Altman.

In closing, I should also add that at some point in time, I recall briefly informing the President and Mrs. Clinton, in separate conversations, of the gist of the discussion at the February 2nd meeting, and that Mr. Altman had shortly thereafter decided not to recuse himself. I speak with the President and the First Lady several times a week about a number matters, and cannot recall the specifics about these conversations or when they took place. I recall that neither of them had any particular reaction to the information; nor did they ask me to take any action with respect to the recusal issue.

I also recall speaking to the President, at some point in time, about the RTC's retention of Jay Stephens. The President expressed concern that such a highly partisan individual could have received such an appointment, but he did not ask me to contact Treasury or the RTC, or to take any other action with respect to the Stephens appointment. Nor did I take any.

I have outlined for you the essence of any conversations that I presently recall having with Mr. Altman concerning the RTC's inquiry into Madison. There was nothing in any of my contacts with Treasury officials

that was intended to influence -- or that had the effect of influencing -- any RTC decision with respect to Madison. Independent Counsel Fiske concluded that there was nothing illegal about these contacts. In addition, both the White House Special Counsel Lloyd Cutler and the Office of Government Ethics reviewed the record on these contacts and concluded that there was nothing unethical about them.

I will answer questions you may have about these events.



2/2/79

B. Weiss brown

B. Patton

- ~~B. Hannon~~ - age 100... Tracy

N. Eggert

2-6 - S/L about to expire

S/L interest introduced  
to original date - 14 Nov 89

Date initiated listed as

1 Nov 89

5 years from original date  
of listed as -

(Nov 92)

78F4 - last date for RTC to send conclusion.

a) any claim for patented invention -  
a found re any of the parties

or b) unname attributed to person (own claim)

or c) telling agent

Gen Counsel E. L. Kellum RTC - <sup>Coordinating</sup> ~~Coordinating~~ <sup>reunited</sup>

Jail person - OTS (Office of the Sheriff)

Gen Counsel DOT

STATEMENT OF BRUCE R. LINDSEY  
Before the United States Senate Committee on  
Banking, Housing and Urban Affairs

August 4, 1994

Mr. Chairman and Members of the Committee:

My name is Bruce Lindsey. I am an Assistant to the President and Senior Advisor. I am also from Arkansas and have known President Clinton for over twenty-five years. I am therefore the person in the White House who generally handles press inquiries related to Arkansas issues.

I welcome this opportunity to share with this Committee and the American people the facts concerning communications I had with Treasury Department officials in which the RTC investigation of Whitewater or Madison Guaranty was discussed.

These conversations occurred after information about RTC referrals involving Madison Guaranty was leaked to the press. My conversations with Treasury officials centered solely around what the press was reporting and how, if at all, we should respond. It was always my understanding that the Treasury officials were simply passing along what they were hearing from the press. In fact, to this day, I do not know the content of the referrals.

Mr. Chairman, I am not aware of any law, ethical rule, or principle of common sense that suggests that one Administration official cannot alert another official to the contents of reporters' questions. To suggest that something improper took place here is simply to ignore the facts. Let me briefly state those facts.

In late September or during the first few days of October 1993, I had a short conversation with Associate White House Counsel Cliff Sloan, and perhaps Associate White House Counsel Neil Eggleston, in which I learned that there had been RTC criminal referrals relating to Madison Guaranty and that the Clintons were incidentally mentioned in the referral document, but not as targets or subjects. I have no notes of this first conversation, but my best recollection is that it was quite brief and that Cliff Sloan alone spoke with me.

It was my understanding that leaks had occurred or were imminent and that members of the press were or would be asking about the referrals. I assumed that they wanted me to know this information so that I would not be surprised if I received calls from the press about these referrals. In fact, I did receive such press calls in the coming days and did respond to them.

A few days later, on or about October 4, I received a call from Jim Lyons, a Denver lawyer who had been involved in the 1992 campaign, reporting on press inquiries he and others had received which referenced the criminal referrals. I was traveling with the

President at the time and briefly mentioned this information to him. I did not suggest, nor did the President ask, that any action be taken, and none was.

The next conversation I had about this matter occurred on October 7 or 8, 1993, a few days after my discussion with the President, and was with both Cliff Sloan and Neil Eggleston. My notes, which have been provided to the Committee, reflect that I was informed in this conversation of specific press inquiries, including information from the press that the apparent criminal referrals included a reference to Arkansas Governor Jim Guy Tucker. I did not have any discussions with the President regarding this conversation.

The next communication I know about between the White House and Treasury on this subject occurred on October 14, 1993. On that date, I and several of my colleagues met with officials from the Treasury Department at the White House to discuss additional press inquiries. This meeting took place after Jack Devore, a press official at the Treasury Department, had received a call from Jeff Gerth of the *New York Times* about the alleged criminal referrals, including a suggestion that the referrals were being "bottled up" in Washington, rather than going to the United States Attorney's Office in Little Rock. Mr. Devore was seeking guidance on how to respond to this press inquiry. He told us that he had checked and found that the referrals had initially been sent to Washington but that, well before the reporter had inquired, they had been forwarded to the U.S. Attorney's Office in Little Rock. Mr. Devore wished to confirm these facts to the reporter before an incorrect story was written on the subject. He indicated it was standard practice for the RTC to confirm the existence of a criminal referral. I expressed some surprise at this and suggested that Mr. Devore, rather than confirming the existence of the referrals, should respond to the reporter by stating that whatever had been sent from the RTC had been forwarded to the U.S. Attorney's Office in Little Rock prior to the reporter's inquiry. No one discussed or suggested that any action should be taken to try to influence the matters that were the subject of the RTC referrals. To my knowledge, other than my checking campaign records with regard to one of the questions the reporter was asking, nothing further was done after the October 14 meeting other than Mr. Devore responding to the reporter's inquiry.

In early December 1993, I received faxes from two Treasury Department officials of press-generated Freedom of Information Act requests for Madison documents. These came to me without comment, and I took no action in response to them.

The final so-called White House-Treasury contact in which I was involved occurred sometime in February 1994, and again was precipitated by a press inquiry. A reporter contacted a press officer at the Treasury Department about a meeting between White House and Treasury officials at which there was a briefing on the RTC civil statute of limitations. The reporter said that she understood that, at that meeting, a White House official attempted to pressure the Treasury Department to give a similar briefing to the private attorneys involved in the matter.



This press inquiry to the Treasury Department was passed along to a White House press official who passed it along to me. Since I had not attended any such White House-Treasury meeting, I called Roger Altman, whom the reporter indicated had attended the meeting, and asked him whether such a meeting had occurred and, if so, what had happened. Mr. Altman told me that there was a meeting in early February at which he and other Treasury officials briefed White House officials on the statute of limitations issue. Mr. Altman told me that a White House official had asked him whether a similar briefing would be given to the private attorneys in the matter. Mr. Altman said that he had checked with an RTC attorney who indicated such a briefing would be given at the appropriate time in the future, but not now. Mr. Altman told me that no one at the meeting instructed him to do anything. I advised Mr. Altman to respond to the press inquiry accordingly, and I took no further action.

I have now informed this Committee of all the White House-Treasury communications in which I was involved. I also have produced my contemporaneous handwritten notes and memoranda relating to these matters, which reflect what I have just recounted.

Before I conclude, let me restate as clearly as I can: None of these conversations, nor any other action that I am aware of, involved any effort by anybody to influence the conduct of any investigation. They were discussions advising us of reporters' inquiries and about how to respond. Nothing improper occurred.

I will be happy to answer your questions.

# Notes from Lindsey from his Call w/ James Lyons

Lindsey  
 San Francisco  
 Hilton  
 and Towers  
 Doretta - checked  
 then - doesn't remember  
 talk to Ry -  
 - Gerth / Isackoff - #62960  
 Gerth <sup>has</sup> all of the reports  
 of examination in  
 connect - w/ Madson  
 Guaranty -  
 RTC source → 7IRIA  
 9 Criminal referrals →  
 Blakely Brundt  
 TAX  
 SHOW Home

333 O'Farrell Street, San Francisco, CA 94102  
 Telephone 415-771-1400  
 Reservations 1-800-HILTONS

BL00070

TESTIMONY OF GEORGE R. STEPHANOPOULOS  
BEFORE THE SENATE BANKING COMMITTEE

AUGUST 4, 1994

In discussing my contacts with Treasury officials respecting matters which are the subject of these hearings, I will focus mainly on two brief telephone conversations.

The first occurred with Josh Steiner, Treasury Chief of Staff, concerning Roger Altman's decision to announce his recusal from decisions concerning Madison Guaranty. Mr. Steiner was my regular point of contact at Treasury for obtaining information that affected Administration policy.

In the course of that conversation I asked about the decision to hire former United States Attorney for the District of Columbia, Jay Stephens -- a vocal, persistent and public political opponent of the President -- to handle the RTC inquiry of Madison. I was puzzled at how he could be hired, given his obvious inability to be impartial, and I asked how that decision was made.

As I have said publicly in the past, I did blow off steam in that conversation, based on my belief that Mr. Stephens had and has a conflict of interest, that he could not be an impartial investigator. Mr. Steiner informed me that the decision had been made by an independent board. That ended the conversation. I took no further action.

I believe later that day I had a conversation with Harold Ickes and Roger Altman during which the subject of his recusal was discussed, specifically, as I recall, that he had informed a

New York Times editor that he had decided to recuse himself. I was concerned that because of the manner in which he had chosen to announce his decision the Administration would, for a time, be maintaining inconsistent public positions on this issue. I suggested that Mr. Altman write the President a personal note explaining his decision as a courtesy. I took no further action concerning this issue.

STATEMENT OF JOHN D. PODESTA  
Before the  
U.S. Senate  
Committee on Banking, Housing and Urban Affairs

August 4, 1994

Mr. Chairman and Members of the Committee,

My name is John Podesta. I am Assistant to the President and the White House Staff Secretary, a position I have held since Inauguration Day, January 20, 1993. My principal duties involve managing the paperflow going to and from the President.

Earlier in my career, I spent more than nine years on the staff of two Senate Committees -- as counsel to the Judiciary Committee and, for more than a year, as chief counsel to the Committee on Agriculture, Nutrition and Forestry. As a result of my Capitol Hill experience, I have, from time to time, been asked at the White House to work on legislative and Congressional matters. It is in this context that my connection to the matter before this Committee took place.

On, or perhaps just before, February 14, 1994, I was asked by Mack McLarty and Pat Griffin, the Director of White House Legislative Affairs to work on upcoming hearings involving RTC matters. Mr. Griffin had recently joined the White House staff and was concentrating his time and attention on passage of the President's legislative program, principally Health Care Reform.

In anticipation of upcoming RTC Oversight Board hearings, we expected questions on Madison Guaranty to be raised. My task, as I saw it, was to analyze what was likely to take place at the hearings, and to recommend ways to ensure that the hearings were fair and balanced. This assignment was in addition to my regular duties, and did not consume the majority of my time. As best I can recall, this is a summary of what occurred over the following days.

On February 15, I met with Mike Levy, Assistant Secretary of the Treasury, and discussed the expected RTC Oversight Board hearing in the Senate Banking Committee. Mr. Levy briefed me on the composition and functions of the RTC Oversight Board. During the remainder of that week, Mr. Levy and I had several telephone conversations concerning the hearing. We never discussed the underlying investigation of Madison, nor did I discuss that subject with anyone else at Treasury or the RTC. Mr. Levy and I did briefly discuss the fact that Roger Altman would need to be prepared to answer questions about recusal in light of the fact that Ricki Tigert, our nominee to Chair the Federal Deposit Insurance Corporation, had been pressured on recusal during her confirmation hearings. I did not try in any way to influence the substance of Mr. Altman's answer on the subject of recusal. My discussion with Mr. Levy only went to the fact that Mr. Altman needed to be prepared to respond to questions on this subject.

In the several days before the hearing, I also spoke by telephone on two or three occasions to Joshua Steiner, Secretary Bentsen's Chief of Staff. At this time, it is difficult for me to separate these conversations or to remember them with precision. I believe I initiated the first call to ask Mr. Steiner to encourage Secretary Bentsen to take a prominent role at the hearing. Again, this was to ensure that the hearing was broadly focused on our Administration's overall handling of the S&L cleanup, and to contrast that record with the record of previous Administrations.

About this time I became aware that Mr. Altman had met on February 2 with White House staff. I believe I raised with Mr. Steiner the fact that Mr. Altman probably would be asked a question about whether he had consulted with the White House on the Madison matter, and that he needed to be able to discuss the February 2 meeting in response to such a question. I did not try to influence the substance of Mr. Altman's response. Mr. Steiner told me that Mr. Altman planned to put in his opening statement the fact that he intended to leave the RTC when his Vacancy Act term expired at the end of March.

In the several days following Mr. Altman's February 24 testimony, I spoke by telephone to Mr. Steiner on three or four occasions. On February 25, Mr. Steiner told me that Mr. Altman had recused himself from Madison matters. Mr. Steiner also told me about the procedures the RTC went through in hiring Jay Stephens, the former Republican U.S. Attorney, to pursue RTC civil claims arising out of the Madison failure.

Finally, following a meeting on March 1 at the White House at which Mr. Nussbaum, Mr. Klein, Mr. Eggleston, Mr. Sloan, Mr. Lindsey and I discussed Mr. Altman's testimony, I spoke with Mr. Altman about the possible need to supplement his testimony on three points -- (i) how the February 2 meeting was arranged; (ii) the fact that recusal was discussed at the February 2 meeting; and (iii) whether anyone from the RTC had advised the White House of the criminal referrals involving Madison.

Mr. Altman and I had, what, in my view, was a constructive conversation on the three points, which resulted the next day in Mr. Altman's letter supplementing the record concerning the fall meetings. Mr. Altman later sent a letter on the recusal point. I had no subsequent conversations with Treasury or RTC personnel that related in any way to Madison Guaranty.

That concludes my prepared remarks. I look forward to answering your questions.

STATEMENT OF BERNARD W. NUSSBAUM  
BEFORE THE  
COMMITTEE ON BANKING, HOUSING, AND  
URBAN AFFAIRS  
UNITED STATES SENATE

103RD CONGRESS, 2D SESSION  
AUGUST 4, 1994

Mr. Chairman, Senator D'Amato, and Members of the Committee:

Introduction

I was Counsel to the President of the United States from January 20, 1993 until April 5, 1994.

I was deeply honored to serve my country. This was an extraordinarily challenging and rewarding position. I will never forget it, and I will always be grateful for the opportunity to serve.

We are here today to talk about issues which have significant consequences for the operation of the Executive Branch.

How should the White House Counsel conduct himself or herself when a federal agency is conducting an investigation that does, or might, involve the President?



Can there ever be any contact between that agency and the White House with respect to that investigation?

As you will see, I do not believe there is, or can be, any flat prohibition against contacts between the agency and the White House. Issues may arise in the context of such an investigation that implicate broader policy issues or, indeed, the proper functioning of the Executive Branch. In these circumstances, categorically to prohibit contacts with the White House would weaken the Presidency and do violence to the President's role in our constitutional scheme.

I am here specifically to discuss with you certain meetings I had with Treasury officials in September and October 1993 and February 1994 relating to the Madison/Whitewater matter. I will describe to you in some detail what happened during those meetings.

But I also wish to make it clear at the outset what did not happen. I did not, nor, as far as I am aware, did anyone else at the White House ever seek to direct the outcome of or interfere with that investigation. That would have been manifestly improper. That did not happen.

In my view -- and I hope yours when you understand what occurred -- these meetings were proper. They were proper because, in ways I will describe, they facilitated the proper functioning of the Executive Branch. They enabled the White House to perform its official duties. They furthered legitimate public purposes.

I will explain to you what I was thinking as I took the actions I will describe. There are some who, looking back, disagree with my judgments. But I hope you will come to understand that throughout my term in office, I sought to conduct myself in the highest traditions of public service and of my profession. I believe I did so.

Let me turn to the meetings and contacts.

#### Meetings and Contacts

September 29, 1993. On September 29, 1993, I attended a meeting with Treasury officials, including Treasury General Counsel Jean Hanson, in my office. The meeting, convened by Treasury officials, concerned a report the Department was about to issue on the Waco incident. At the end of the meeting, Ms. Hanson drew me aside and asked to speak to me.

Ms. Hanson said that the RTC had made or was about to make criminal referrals to the Department of Justice related to an Arkansas savings and loan association. She told me that the Clintons were not objects of the referrals, that is, they were not potential defendants. She said that one of the referrals related to certain checks that had gone to a Clinton gubernatorial campaign and there was a question whether these were proper contributions. She said the Clintons were mentioned as possible witnesses.

Ms. Hanson said that she was telling me about the referrals because she believed that this information would soon leak to the press. She believed the White House should be in a position to respond effectively and promptly to press inquiries.

I called in Cliff Sloan, a member of my staff who had been at the Waco meeting. I asked Ms. Hanson to repeat to him what she had just told me. As she did that, Ms. Hanson added that she thought Deputy Treasury Secretary Roger Altman might previously have sent me some material relating to this subject. I told her that I did not recall that.

(Sometime later, she told Mr. Sloan that she had been mistaken, and that Mr. Altman, in March 1993, had merely faxed to me a 1992 New York Times article concerning the Clintons'

Whitewater investment. I subsequently found that article in my files. But I do not recall having received it.)

I asked Mr. Sloan to be Ms. Hanson's point of future contact if she needed to speak further with us regarding press inquiries.

That concluded the discussion with Ms. Hanson. It lasted about five minutes.

Following the discussion, Mr. Sloan or I told Bruce Lindsey what Ms. Hanson had told us. Mr. Lindsey, a senior White House advisor, at that time normally responded, on behalf of the White House, to press inquiries concerning Arkansas matters.

October 14, 1993. On October 14, 1993, a meeting took place in my office between Treasury and White House officials. Jack DeVore, an Assistant Treasury Secretary for public affairs, had called Mark Gearan, the Director of White House Communications, the day before to ask for the meeting. Mr. DeVore explained to Mr. Gearan that the Treasury had received press inquiries related to the Madison referrals. He wanted to explain how Treasury would respond. Mr. Gearan asked me if the meeting could take place in my office.

I had previously issued memoranda to the White House staff -- similar to those of my predecessors -- counseling that contacts with agencies concerning pending adjudicative or investigative matters had to be cleared through the Counsel's office. We recognized that such contacts were potentially sensitive and that, as a general proposition, they should not occur. However, there was no flat prohibition.

We recognized that sometimes a contact would be necessary to enable the White House to discharge its official functions. In each instance, the Counsel's office was to be involved in order to ensure that the contact was limited to an exercise of official functions and did not entail any effort to interfere with or direct the outcome of the adjudication or investigation.

I agreed to the meeting that Mr. Gearan had described to me because I believed it would serve an official function. It was important for the White House to understand what the Treasury was going to say to the press, so that the White House could promptly and effectively respond to press inquiries it would inevitably receive.

The October 14 meeting was attended by Mr. DeVore, Ms. Hanson and Josh Steiner from Treasury, and Mr. Lindsey, Mr. Gearan, myself, Mr. Sloan and Neil Eggleston of my staff.

I remember Mr. DeVore explaining that Jeff Gerth, a New York Times reporter, was aware of referrals to the Department of Justice in the Madison Guaranty matter. He was asking why the referrals had been forwarded to Washington D.C. from Kansas City instead of directly to the United States Attorney's Office in Little Rock. Mr. Gerth apparently believed that the forwarding of the referrals to Washington was unusual and might suggest special treatment.

Mr. DeVore said he was going to advise Mr. Gerth that the referrals had been sent to the United States Attorney's Office in Little Rock before Mr. Gerth had called. A question was raised whether it was usual for the RTC to confirm criminal referrals. As I recall, Mr. DeVore said that it was not usual, but it was done in certain circumstances.

We were also told that Mr. Gerth was inquiring, and would likely ask the White House, about the endorsements on four cashier's checks from Madison to the Clinton gubernatorial campaign. In essence, all that we were told at this meeting is what

the New York Times was saying to Treasury and what Treasury was planning to say to the New York Times.

With respect to the referrals mentioned in the September 29 conversation and the October 14 meeting, I never saw a copy of them. Nor did I ever ask to do so.

Early January 1994. In early January 1994, Joel Klein, the new White House Deputy Counsel, told me that at the Renaissance weekend in South Carolina, which Mr. Klein attended, the President had sought to have a brief conversation with Eugene Ludwig, Comptroller of the Currency, asking for advice as to how to deal with the recent flurry of Whitewater stories.

Mr. Klein said he told the President and Mr. Ludwig that it would be best if they did not speak about the matter. I told Mr. Klein I agreed and that he had done the right thing. At some later time, in a brief telephone call from Mr. Ludwig, I told him that I agreed with Mr. Klein.

I saw the President shortly thereafter. I told him I had heard about his brief conversation with Mr. Ludwig. I said it was also my view that he should not speak to Treasury officials about this matter. The President and I agreed that if there were any appropriate discussions to be had, they

should be had by counsel -- either White House counsel if they involved official matters, or private counsel if they concerned purely private matters.

February 2, 1994. The next contact I recall occurred on February 2, 1994. On that day, I received a call from Mr. McLarty's office asking me to attend a meeting that evening in his office. When I arrived, I found Roger Altman, Ms. Hanson, Harold Ickes (the White House Deputy Chief of Staff), and Margaret Williams (the First Lady's Chief of Staff) in the room.

When I asked what the meeting would concern, I was told that Mr. Altman was going to brief us about the statute of limitations process being followed in the RTC's Madison Guaranty investigation. I then asked one of my staff, Mr. Eggleston, to join us.

At the outset of the meeting, Mr. Altman told us that he would be informing us about a process that had recently been discussed with members of Congress. He then described the RTC Completion Act, explaining that the statute of limitations with respect to civil fraud and intentional misconduct was due to expire on February 28, 1994 in the Madison matter.



He told us that the RTC would have to reach a decision by that date about whether there was a prima facie case of fraud or willful misconduct. He said the RTC would have three options: (1) bring a lawsuit if there was a good faith basis for one; (2) do nothing and let the statute of limitations expire; or (3) seek from potential defendants -- including possibly the Clintons -- tolling agreements extending the statute of limitations. He indicated that the RTC staff would be in a position to act before February 28.

Mr. Altman said that the RTC investigation was headed by Jack Ryan, the RTC's Deputy Chief Executive Officer, and Ellen Kulka, the RTC's General Counsel. He told us that he had confidence in them and would be inclined to rely on their recommendations. He said that they had both recently come from the Office of Thrift Supervision (OTS). I said that I had heard of Ms. Kulka when she worked for the OTS and that she was one of a group of tough OTS litigators.

Mr. Altman then turned to a subject that he had not previously identified as a topic for discussion. He said that he was considering recusing himself from the Madison Guaranty investigation. He said he had discussed this with Ms. Hanson and Secretary Bentsen, and they agreed it would be best.

Mr. Altman went on to say that he had received ethics advice to the effect that he was not legally or ethically required to recuse himself. This meant two things to me:

First, that Mr. Altman believed he could act impartially in the Madison Guaranty matter; and

Second, that Mr. Altman and his ethics advisor believed that his acting in the matter would not raise an appearance of partiality within the meaning of the relevant ethical standards.

Notwithstanding this ethics advice, Mr. Altman said he was inclined to recuse himself. Mr. Altman added that he did not believe his recusal would have any effect on the RTC's decision-making process, since he expected to follow the recommendations of the RTC staff in any event.

I felt that what Mr. Altman had said raised an important policy issue for the Executive Branch. I was concerned that Mr. Altman's recusal might set a bad precedent for the Clinton and future Administrations.

My experience as a lawyer has taught me that if a judge has a legal or ethical reason for recusing himself or

herself from a matter under adjudication, he or she should promptly do so. But if there is no legal or ethical reason for recusal -- and Mr. Altman had said that there was no such legal or ethical reason -- then the individual should do his or her sworn duty.

This principle was eloquently expressed by Justice Rehnquist in Laird v. Tatum, when, shortly after he was appointed to the Supreme Court, he was asked to recuse himself from a case. After finding he was not legally required to recuse himself, he wrote that the duty of "a federal judge . . . to sit when not disqualified . . . is equally as strong as the duty to not sit where disqualified."

I believe that the same principle applies to the Executive Branch and regulatory agencies. Public officials should not have the option of avoiding their responsibilities simply because they are difficult, or inconvenient, or because the officials find it personally or politically expedient to step aside.

When I testified last week before the House Banking Committee, I made this same point. Since then, the non-partisan Office of Government Ethics issued a report which supports this position. The OGE wrote (on page 20):

"[T]he impartiality provisions of the standards of conduct may not be relied upon by an employee as the basis for recusing himself from a matter because he simply does not wish to be involved or to exert the effort required. Under the standards of conduct, employees are expected to perform their duties fully unless there is a reason that their participation in a matter will result in an actual conflict, including an inability to act impartially, or will result in an appearance of conflict significantly detrimental to the public's legitimate perception of the fairness of the Governmental processes involved."

What the OGE is saying, in simple language, is that a public official has a duty to do his or her duty. And that official has no right to retreat behind ethics rules -- when those rules do not apply -- to avoid doing his or her job. It would be improper to do so.

The public policy issue raised by what Mr. Altman said regarding a possible recusal was not an academic one. It was then a matter of immediate concern to the Administration.

Just the day before this February 2 meeting, a nominee for the chair of the FDIC, Ricki Tigert, had been asked by certain Senators on this Committee to agree to commit in advance to recuse herself on any issues connected to Madison or Whitewater. She was asked to do so for the stated reason that she knew the Clintons and was being nominated by the President.

Ms. Tigert had taken the position that, if she were confirmed and asked to address Madison/Whitewater-related questions, she would consult the appropriate agency ethics officer and follow his or her advice. The inquiring Senators indicated that Ms. Tigert's response was not sufficient. They told her that if she would not agree to recuse herself in advance -- regardless of whether she was legally or ethically required to do so -- they would block her nomination.

At the time of the February 2 meeting, I and others in the White House believed it was important for the Executive Branch to resist efforts to force nominees to agree in advance to recuse themselves in situations where recusal was not legally or ethically required. We felt that those seeking Ms. Tigert's commitment to recuse herself were tampering with the agency adjudicative process.

So, when Mr. Altman said, without any advance notice, that he was inclined to remove himself from the RTC investigation, without a legal or ethical basis for doing so, I felt that he might create an unfortunate precedent for our Administration and future Administrations.

As White House Counsel, I was concerned about what Mr. Altman was considering doing. But I did not tell him to remain in the matter.

This is what I said to him.

I said that if he was legally or ethically required to recuse himself, he should do so promptly. Obviously, if Mr. Altman had a disqualifying financial interest, or if he believed that he could not decide the matter impartially, or if his continuing to act created an appearance of favoritism within the meaning of the relevant ethics code -- any of which was a ground requiring recusal -- it would be necessary for him to remove himself.

But he had already told me he had received ethics advice that he did not have a legal or ethical obligation to recuse himself.

So I went on to say, that if recusal was not legally or ethically required, he should consider whether he should remove himself. I also said that, even if he ultimately determined to rely on his staff's recommendation (as he said he would), the fact that his staff knew there would be a review of its recommendations would help to insure the fairness and professionalism of the process. I was particularly concerned about the numerous leaks which seemed to accompany RTC actions.

I concluded by saying to Mr. Altman that, in any event, the decision on recusal was for him alone to make. He said he would give the matter further thought.

The only other discussion I can recall at the February 2 meeting is Ms. Williams asking if the private lawyers for the parties, including the Clintons' lawyers, would be briefed on the statute of limitations process. Ms. Hanson or perhaps Mr. Altman said that they would consider it.

On the way out of the meeting, I asked Ms. Hanson if Mr. Ryan's and Ms. Kulka's nominations had been submitted to the White House for clearance. (We were normally consulted before agency nominations were approved, and I could not recall having heard of their nominations.) Ms. Hanson told me they had in fact been submitted to the White House.

During questioning by Committee staff, I was asked whether I had negative feelings about Ms. Kulka. I responded that I did. I explained that I had never met or dealt with Ms. Kulka personally but that when she was at OTS she had been peripherally involved in a case brought by OTS against a respected law firm.

In private practice, I had represented that law firm. I believe that the OTS acted unfairly and unprofessionally in that matter. It seized all the assets of the firm at the outset of the litigation, thereby effectively preventing the firm from defending itself.

In the period after February 2, I expressed some of these views to members of my staff. But I did not do so during the meeting on February 2. Nor, indeed, did I do so to any Treasury or RTC official or to any other official outside the White House.

In this connection, I want to be fair to Ms. Kulka. I watched some of her testimony before this Committee. It was impressive. And on March 30, 1994, she and her colleague, Mr. Ryan, wrote what I consider to be a highly professional, independent, even courageous letter to Congressman Leach. After noting that they were not political appointees, they wrote:



"No pressure has been exerted by the Treasury, the White House, or any other source in the Executive Branch concerning the performance of our responsibilities with respect to Madison Guaranty or Whitewater since either of us joined the RTC."

Before leaving the February 2 meeting, I want to respond to one claim that was made at the start of this hearing. It was said "that the reason the White House urged Roger Altman to stay on the case was the fear that the RTC General Counsel who would take over the decision would be too 'tough' on the Clintons."

To the extent that statement was intended to refer to me, my answer is this:

First, I did not urge Roger Altman to stay on the case. I do not believe it would have been improper if I had urged him to stay on. But I did not do so. I asked him only to consider whether he should remove himself if he had no legal or ethical obligation to do so. I said the decision was his to make. If I wish to urge someone to do something, I am usually not at a loss for words; and

Second, the reason I requested Mr. Altman to consider the matter of recusal further was not a fear that the RTC General Counsel would be too tough. I would have made the same statement no matter who was general counsel of the RTC. I made it because of the principle I previously discussed -- that a public official has a duty to do his or her duty. I also made it because an Altman recusal would undermine our position on the Tigert nomination.

February 3, 1994. On February 3, Ms. Hanson faxed me a letter Mr. Altman had received from Congressman Leach urging Mr. Altman to consult an ethics officer concerning recusal. She left a message asking me to phone her. When I returned the call that evening, Ms. Hanson told me that Treasury was continuing to research the ethical issues involved in recusal.

I suggested to Ms. Hanson that whoever was doing the research might find it useful to speak to Beth Nolan. Ms. Nolan was an Associate White House Counsel on my staff who dealt with ethics issues. She is a former ethics Professor at George Washington Law School and is well known and respected for her expertise. (Ms. Nolan later told me

she did in fact have a discussion with a Treasury ethics official, Dennis Foreman.)

I also suggested to Ms. Hanson that, to the extent there might ultimately be some concern at Treasury or the RTC about an appearance of lack of independence of the decision-makers on the Madison/Whitewater investigation, she might take a look at the civil jurisdiction in the recently-appointed Independent Counsel's charter and consider the advisability of the RTC referring these matters to the Independent Counsel.

On February 3, or shortly thereafter, I ran into Mr. Altman in the hallway of the West Wing of the White House. Mr. Altman told me in a brief conversation that he had given the issue more thought and probably would not recuse himself.

Later in February 1994. Later in February, either Mr. Eggleston or Ms. Hanson told me that Mr. Altman would leave the RTC at the end of March when his term expired and that he either could not or would not seek renewal of his appointment. I also believe that Mr. Altman told me later in February, in another brief conversation, that a Washington lawyer, Larry Simon, was likely to be nominated to head the

RTC and he hoped Mr. Simon's nomination would be confirmed quickly.

There is also an additional conversation within the White House -- not with the Treasury or the RTC or anyone outside the White House -- which I believe will help the Committee to understand that there was no attempt on our part to influence the outcome of the RTC's investigation.

In mid-February 1994, one of the lawyers on my staff told me that the RTC had retained Jay Stephens to conduct its investigation of Madison. Mr. Stephens, as you know, had expressed political opposition to the President in the past. When he resigned as U.S. Attorney for the District of Columbia in early 1993, he did so with a political blast at the Administration.

In response to this news, I shook my head in dismay and disbelief. I said that the appointment of Mr. Stephens was ridiculous and unfair. I also said that there was nothing we should or would do about it.

#### The Meetings and Contacts Were Proper

The meetings and contacts I have described have given rise to considerable controversy. In my view, however, they were appropriate. I was acting to facilitate the proper

functioning of the Executive Branch and to enable the White House to perform its official duties. I was acting in the pursuit of legitimate, public purposes.

First, with respect to the September 29 meeting, Ms. Hanson provided the White House with notice of a referral that she predicted -- quite correctly -- the White House would be required publicly to address in the near future.

Treasury understood that neither the President nor the First Lady was a subject of the referral. They were potential witnesses. There was obviously a concern that a partial or inaccurate leak might lead the uninformed to believe that because the Clintons were mentioned -- or "named" -- in the referral, they were somehow implicated in some improper conduct.

In preparation for these hearings and those in the House, I have been questioned about whether I thought Treasury officials had provided the White House with so-called non-public information -- as if there were something illegitimate about an executive agency sharing non-public information with the White House.

The White House receives non-public information all the time. The real question is whether this information is being

properly transmitted and properly used for an official purpose and not for private gain or other illegitimate purpose.

The White House is required to respond to numerous press inquiries that concern both the official acts and past private behavior of the President and First Family. It is important that the White House be in a position to disseminate accurate information to the public to ensure that spurious or inaccurate allegations concerning the President are dealt with promptly and appropriately. Otherwise, confidence in the President and the Presidency could be undermined without justification. The September 29 meeting furthered this public purpose.

There have been suggestions at this inquiry that assisting the White House to prepare itself to respond to press inquiries -- about an investigation in which the President is named only as a potential witness -- does not further a necessary and important public purpose.

What this argument overlooks is the special problems the President faces and the unique responsibilities he has -- problems and responsibilities not faced or borne by anyone else.

The President is much more likely than anyone else to be the subject of leaks. He is the focus of overwhelming media

attention. He is the target of opponents who feel no hesitancy in misusing or distorting leaked information in an effort to discredit him. And, of course, he is required to continue to act, at the same time, at home and abroad, as the nation's Chief Executive Officer.

In its recent report, the OGE recognizes that "the question of whether Ms. Hanson's disclosure [of the criminal referral] served an official interest raises a unique issue about the nature of the office of the President."

It goes on to say that:

"Matters that would be of only personal significance for other Executive Branch officials may take on official significance when the President of the United States is involved. White House staff has long been used in addressing press inquiries regarding essentially personal matters involving the President and First Lady."

And it concludes that dealing with press inquiries regarding the President's and First Lady's personal lives, including any involvement they may have had with Madison, is a proper White House function.

I would also commend to you an article in yesterday's Washington Post by Mr. Cutler, my successor, entitled "Heads-Up History."

Citing examples from the administrations of Harry Truman, Dwight Eisenhower, John Kennedy, Lyndon Johnson, Richard Nixon, Jimmy Carter and Ronald Reagan, he demonstrates how customary it has been for government agencies with law enforcement responsibilities to inform the White House whenever a criminal investigation is launched that involves high administration officials or the President himself.

And one reason for this line of precedent is expressed as follows by Mr. Cutler:

"The president is the heart and brain of the executive branch. Like a hospital patient undergoing tests, he is monitored by a host of journalists who watch his every move and bombard him with questions. An unanswered question can be a story in itself, especially when it contains a hint of possible scandal. Presidents simply cannot afford to be uninformed or taken off guard."



In sum, both history and the OGE report of this past week clearly support the position that to inform the White House that the President may be a witness in a criminal referral -- a referral almost certain to leak -- serves a legitimate, public purpose.

It is a proper White House function to help the President prepare himself to respond accurately and promptly to press inquiries, to defend himself against misinformation and disinformation.

Second, regarding the October 14 meeting, Treasury officials advised us of a press inquiry that they had already received and their plans for responding to it. By providing that information, the Treasury officials were assisting the White House in understanding the nature of the press' interest so that the White House could prepare itself to respond to further inquiries. This, as I have stated, is a necessary and important public purpose.

There have been suggestions that the limited information conveyed at the September 29 and October 14 meetings should not have been conveyed because it could have been put to an improper use. That is true of virtually all the information the White House receives on numerous matters. And it is true, of course, of

information received from time-to-time by other branches of government.

The question is not whether the information is subject to possible misuse. The question is whether it was, in fact, misused. Did anyone in the White House violate his or her oath by using the information for a purpose other than to prepare the White House to respond to press inquiries? There is not a shred of evidence that anyone in the White House did that.

What did happen is that the criminal referrals proceeded on their normal course. They were not stopped, they were not changed, they were not adversely affected in any way. As of this time they have been referred to the Independent Counsel for whatever action he ultimately determines to be appropriate.

Finally, with regard to the February 2 meeting, the information regarding the statute of limitations process was no different from that already provided to a number of members of Congress. In any event, there was no information provided in the February 2 meeting related to RTC procedures that White House lawyers did not already know and would not have been obvious to any experienced litigator.

I have already explained the significant public policy concerns with Mr. Altman's statement that he was considering recusal. It was appropriate to ask Mr. Altman to consider carefully whether he should recuse himself in a case involving the President where Mr. Altman was neither ethically nor legally obligated to do so. In Mr. Altman's case, it was all the more important to urge careful deliberation since he -- and others, such as Ms. Tigert -- were being pressed by the President's political opponents to recuse themselves.

As I have stated, I believed then, and I believe now, that Executive Branch officials and agency heads should not remove themselves from sensitive matters simply because of political advantage or expediency or for their own personal convenience. They should do their duty.

\* \* \*

I feel strongly about the importance of the policy issues that were raised by these meetings. Others, I know, feel less strongly about these policies. They believe that there are other, overriding considerations, particularly political ones.

I respect these different views. But let us be clear. We are talking about legitimate differences of opinion. We are not talking about differences in ethical standards or standards of propriety.

At the same time, I want you to understand that I agree that not everything we did was perfect. We could, and should, have done better. I agree with Lloyd Cutler that there were too many contacts, by too many people, about too many subjects -- particularly in February 1994.

I feel responsible for some of the lack of discipline reflected in some of these contacts. And I support Mr. Cutler's proposals for changes in White House procedures. All future contacts of the sort I have described should be lawyer to lawyer.

We may have our differences today. But I want you to understand that every moment I held the position of Counsel to the President, I sought to conduct myself in the highest traditions of public service and of my profession.

Thank you.

EL

## ZUCKERMAN, SPAEDER, GOLDSTEIN, TAYLOR &amp; KOLKER

ATTORNEYS AT LAW

1201 CONNECTICUT AVENUE, N.W.

WASHINGTON, D.C. 20036

(202) 778-1800

TELECOPIER

(202) 822-8106

201 SOUTH BISCAYNE BOULEVARD

MIAMI, FLORIDA 33131

(305) 579-0110

100 EAST PRATT STREET

BALTIMORE, MARYLAND 21202

(410) 332-0444

101 EAST KENNEDY BOULEVARD

TAMPA, FLORIDA 33602

(813) 221-1010

1114 AVENUE OF THE AMERICAS

NEW YORK, NEW YORK 10036

(212) 479-6500

ROGER E. ZUCKERMAN  
MARK W. FOSTER  
ROGER C. SPAEDER  
BRUCE GOLDSTEIN  
WILLIAM W. TAYLOR III  
PETER R. KOLKER  
ARTHUR K. MASON  
STEPHEN H. QUICKMAN  
RONALD B. RAVIKOFF  
MICHAEL R. SMITH  
HERBERT BETTER\*  
MICHAEL S. PASANO  
ANTHONY THOMPSON  
NELSON C. CONEN  
STEVEN M. SALKY  
EDWARD C. BERKOWITZ  
JUDITH STURTZ KARP  
DONALD J. MCCARTNEY  
ERIC F. FAGER  
MARSHALL S. WOLFF  
MORRIS WEINBERG, JR.  
HUMBERTO J. PERA  
BLAIR G. BROWN  
BARBARA KRAMER MORGAN  
MARTIN S. HIMELES, JR.\*  
SHARON L. KEGERRERIS\*  
EDWARD J. H. LITTLE\*  
THOMAS J. MEEKES\*  
MICHAEL STEVEN GREENE\*  
DEBORAH J. JEFFREY  
THOMAS B. MASON  
BARBARA L. WARD

JOHN F. EVANS (1941-1988)

GUY A. RASCO  
LESLIE M. BERGER  
ROSEMARIE SCHMIDT  
BRYAN R. CLEVELAND\*  
MELISSA HAMMERSLEY CLARK  
CYRIL V. SMITH  
LOUISE A. STOVALL  
BRUCE ANON JAMES  
RICHARD B. ROSENBLATT  
ELEANOR M. SMITH  
ELLEN K. FISHBEIN  
JENNIFER M. COBERLY\*  
ALAN M. SCHEINER  
SUSAN E. KESTNER  
VIRGINIA A. WHITEHILL\*  
ROBERT GULACK  
NORMAN L. EISEN  
LAURA L. VAUGHAN\*  
MARIA A. STAMOULAS  
TERESA HALLIGAN\*  
GREGORY M. GUST  
DAVID U. GOUREVITCH  
LISA A. CAHILL\*  
JEFFREY P. AGRON\*  
JILL M. GRANAT\*  
CHRISTOPHER S. CARVER\*  
SHERYL G. HOLTZ\*  
CHRISTYNO L. HAYES\*  
WHITNEY FOX\*  
REBECA SANCHEZ-ROIG\*

\*NOT ADMITTED IN D.C.

WRITER'S DIRECT DIAL NUMBER

(202) 778-1848

October 7, 1994

BY HAND

Kelly Cordes  
Chief Clerk  
United States Senate Committee on Banking,  
Housing & Urban Affairs  
534 Dirksen Senate Office Building  
Washington, DC 20515-6050

Re: Thomas F. McLarty, III

Dear Ms. Cordes:

I am writing in response to Senator Riegle's letter to Mr. McLarty of September 28, 1994. Enclosed please find Mr. McLarty's responses to the Question from Senator Bond. Please contact me if you have any questions.

Sincerely yours,

*Leslie M. Berger*  
Leslie M. Berger

LMB/mb  
Enclosure

cc: Thomas F. McLarty, III  
William W. Taylor, III

Mr. McLarty's Responses to Question from Senator Bond

Question No. 1: Document X000903 appears to have been sent to you. Are you the "Mack" referred to in the note? Who is the "Joel" referred to in the note? The handwritten message was authored by "P." To whom does this refer?

Answer No. 1: Yes, I am the Mack referred to in the note. "Joel" is Joel Klein, Deputy White House Counsel. "P" refers to Patricia McHugh, my administrative assistant.

Σ

## HOGAN &amp; HARTSON

L.L.P.

COLUMBIA SQUARE  
555 THIRTEENTH STREET NW  
WASHINGTON DC 20004-1109  
(202) 637-5600

ALLEN R. SNYDER  
PARTNER  
DIRECT DIAL (202) 637-5741

BRUSSELS  
LONDON  
PARIS  
PRAGUE  
WARSAW  
BALTIMORE, MD  
BETHESDA, MD  
MCLEAN, VA

October 7, 1994

*PRIVILEGED AND CONFIDENTIAL**BY HAND DELIVERY*

The Hon. Donald W. Riegle, Jr.  
c/o Ms. Kelly Cordes  
United States Senate  
Committee on Banking, Housing and Urban Affairs  
Washington, DC 20510-6075

Dear Senator Riegle:

In response to your letter to Bruce Lindsey of September 28, 1994, enclosed is a transcription of document Nos. X001177-X001178 and X001175-X001176, which was requested by Senator Bond. If you have or anyone else has any questions concerning this transcription or any other issue, please give me a call.

Sincerely yours,



Allen R. Snyder

Enclosure

QUESTIONS FROM SENATOR BOND

Question 1: Please provide a typed transcription of document X001177-X001178.

Answer 1:Document X001177

AP reporter named Kyle  
Checks deposited in  
 Bank of Cherry Valley  
 Maurice Smith

US Atty.→LR→other cashier's check→Jim McDougal/Susan McDougal  
 \$300,000

Current Governor - may well be indicted

Document X001178

→RTC→

Gene Lewis - Chief Investigator  
 RTC  
 Kansas City

field office →U.S. Atty - normal procedure -

field office→RTC Washington  
 last week→sent to U.S. Atty.

[on left side:]  
 -- Jack DeVore  
 -- Josh Steiner  
 -- Jean Hanson

Sue Schmidt

Madison Guaranty

1985 - Rose Law Firm

Jeff Gerrish - private atty. in Arkansas



Jeff Gerth --

- Called Jack yesterday
- Cashiers Checks -- \$12,000
  - 2 payable to BC
  - 2 payable to Clinton Campaign
- April 4/5, 1985 -
- Each check for \$3,000.00
  - repayment of campaign debt -- who endorsed???

[on left side:]

Loan from Madison Guaranty to a Republican "Peacock"

**Question 2:** Please provide a typed transcription of document X001175-X001176.

**Answer 2:**

**Document X001175**

Conversation with Neil/Cliff

- Sue Schmidt/Washington Post
  - asked for RTC investigators telephone #
- RTC "Early bird" - pursuing Rose Law Firm's alleged undisclosed conflict of interests -- internal RTC sources suggest-- Rose Law Firm's members, friends and loans to insolvent s & ls.
- RTC criminal referral -- 9

[on left side:]

Memphis firm

Madison/

↓ d & o

--professional

Frost/

↓ accountant

--malpractice

FDIC-FSLIC-

Rich Donilon

Rose Law firm

**Document X001176**

9 referrals - allegation

JGT - diversion of funds

Senator Fulbright - Peacock

McDougal - 1985

1985 Clinton Committee

October 7, 1994

BY FAX

Senator Donald W. Riegle, Jr.  
Chairman, Committee on Banking,  
Housing, and Urban Affairs  
United States Senate  
Dirksen Senate Office Building, Room 534  
Washington, D.C. 20510-6075

Dear Senator Riegle:

This letter is in response to yours dated September 28, 1994,  
transmitting a question posed by Senator Bond to me. That  
question, and my response are as follows:

Question 1: Did you write the note on document X000903?

Answer 1: No.

Please let me know if you have any further questions. Thank you.

Sincerely,



John D. Podesta  
Assistant to the President  
and Staff Secretary

Richard Cohen

# Another Case of Stepping on the Message

W.F. 8-4-94

Barbara Boxer, senator and mother, asked her colleagues to be kind to Joshua Steiner, the young Treasury Department official whose diary, it seems, lied to him. ("I wish that my diary was more truthful," he told a Senate committee.) Steiner is but 28, Boxer said, and suffers from all the maladies of youth. In other words, he is inclined to self-aggrandizement, to hormonal enthusiasms and, it seems, a cavalier manner toward the truth. If Boxer is right, then Steiner and the Clinton administration are perfectly matched.

Testifying before the Senate committee looking into the White House's handling of the Whitewater affair, Steiner effectively confessed: Either he lied to his diary or he was lying to Congress about lying to his diary. To the former, he confided that Deputy Treasury Secretary Roger C. Altman was under "intense pressure from the White House" not to recuse himself from matters concerning Whitewater. He told his diary that Altman had "gracefully ducked" questions put to him at a Feb. 24 Senate hearing. Altman disputes that account—and so, incredibly, does Steiner.

Someone here is not telling the truth.

That's for sure. In fact, the rank odor of deception has wafted over the entire Whitewater affair from the start. By now, it clings to just about everyone involved, including both Bill and Hillary Clinton—even though, and this is important, no one has yet proved that a single law has been broken. In fact, when it comes to the government's handling of Whitewater, the focus of the congressional hearings, nothing has surfaced to change the Olympian judgment of White House counsel Lloyd Cutler that no laws were broken or ethical principles violated. More's the pity, then, that somehow it seems just the opposite.

The reason Steiner fits so well with the Clinton administration is that he personifies its genius for turning a molehill into a mountain. You can go all the way back to the presidential primaries for examples. Did Clinton smoke dope? How did he avoid military service in the Vietnam War era? Both these questions had simple answers. But they were oh-so-slow in coming, and by the time they did, it was too late. An impression had been formed: Slick Willie.

Somewhat the same pattern has persisted with Whitewater. From its incep-

tion—from the presidential campaign, actually—it has been duck and weave for the Clintons. Just the other day, for example, The Post reported that following Vincent Foster's suicide, his files were not immediately turned over to President Clinton's personal lawyer, as the White House maintained, but to

*"Diary-fibbing is now going to take its place alongside not inhaling."*

Mrs. Clinton's chief of staff. No big deal, maybe, but the revelation reinforces the perception that at the White House candor, to be candid, is bonded to political utility. If it can't help the president, what's the point?

The White House wants very much to tell the American people that Bill Clinton has been a pretty good president with a pretty good record—a pretty

reasonable assertion, as it turns out. Certainly when it comes to the twin P's of American politics, Peace and Prosperity, Clinton has done just swell—and we're deep enough into the post-Bush era for Clinton to take credit. He has cut the deficit, won the NAFTA fight and—whatever the outcome—fought the good fight on universal health care. 'T ain't bad.

But focus groups show the American people are unaware of Clinton's accomplishments—and for this the White House blames the press. "We live in a world where the coverage of Whitewater outpaced coverage of health care," White House senior adviser George Stephanopoulos complained to *The Post*. Doubtful—but if true, the White House has only itself to blame. It wasn't the press that claimed Hillary Clinton made \$100,000 only by reading the *Wall Street Journal's* commodities page. The White House keeps stepping on its own message.

About two weeks ago, Altman informally laid out for me pretty much what he would say when he testified before the Senate Banking Committee.

Yes, he had revised and amended his original answer to the question of how much and to what extent he had conferred with the White House about Whitewater. But even so, no laws had been broken and no ethical rules violated. I confess to some surprise. The appearance of impropriety had, for me at least, obscured the fact that there had been no illegality. I am left, anyway, with the impression that Altman was not as candid as he could have been—and the White House knew it. Yet once again the politics of the situation overrode the obligation to be immediately forthright.

Boxer may be right about Steiner. His loopy notions about the truth may well be a function of youth. Whatever the reason, though, the fact remains that in a distinctly unflattering way he seems more a product of the Clinton administration than anything else. Diary-fibbing is now going to take its place alongside not inhaling as a way of ridiculing the Clinton administration. That may not be fair—but that's not the same as saying it's undeserved.

# Investigators to Seek Ex-White House Aide's Files on Clinton Land Dealings

NYT

12-22-93

By DAVID JOHNSTON

Special to The New York Times

WASHINGTON, Dec. 21 — Federal law-enforcement officials said today that they would seek to examine files removed from the office of the deputy White House counsel shortly after he killed himself last summer, on Arkansas land dealings of President Clinton and his wife, Hillary.

These officials, speaking on condition that they not be identified, said they were studying how best to proceed in a highly charged political atmosphere in which the White House, citing lawyer-client privilege, has suggested that the Clintons will try to keep the documents to themselves.

It is not yet clear how far the investigators are prepared to go in their quest for the files — whether, for instance, they will rely on persuasion and political pressure on the White House or might ultimately try to vanquish the argument of lawyer-client privilege by seeking a subpoena.

Because the Justice Department has had no official comment on the matter, it is not even clear that the department's chief, Attorney General Janet Reno, has approved the effort to obtain the files.

## The First Lady Speaks

Aside from the issue of whether the files should be turned over to the Federal investigators — who would presumably be under legal obligation to keep them secret, as is the norm in criminal inquiries — Mrs. Clinton said today that she saw no reason to make their contents public in response to requests of news organizations.

Investigators said the documents — discovered in the office of Vincent W. Foster Jr., the deputy White House counsel, after his suicide and subsequently removed at the direction of his superior, Bernard W. Nussbaum, the White House counsel — could be relevant to two inquiries under way at the Justice Department.

One involves the circumstances of Mr. Foster's suicide, the other the collapse of a savings and loan association that was owned by James McDougal, the Clintons' partner in a money-losing real estate venture in Arkansas. But the precise nature of the documents has not been made public, and the investigators acknowledged today that they had no way of knowing the files' exact contents.

The real estate venture was the Whitewater Development Corporation, in which the Clintons were equal partners with Mr. McDougal and his wife, Susan, although the McDougals put up disproportionate share of the capital: \$2,000, as against the Clintons' \$68,000.

## Money Diverted

Federal investigators have turned up evidence that Mr. McDougal diverted money from his collapsing savings and loan, Madison Guaranty, to several of his real estate ventures, including Whitewater Development. The savings and loan was seized by the Government in 1989, at a cost to taxpayers of more than \$60 million, and among the issues that investigators are examining is whether Madison Guaranty received favorable state regulatory treatment in the years beforehand, when Mr. Clinton was Governor.

The White House confirmed in a statement issued Monday evening that Presidential aides had removed records relating to the Clintons' investment in Whitewater after Mr. Foster's suicide on July 20 without telling Federal authorities who were then investigating Mr. Foster's death.

In the statement, Mark D. Gearan, the White House communications director, said the materials involved the Clintons' land investments and their personal tax returns. The file was turned over to David E. Kendall, a private family lawyer, who would not discuss the matter today.

In disclosing Monday night that such documents existed and had been removed from Mr. Foster's office at Mr. Nussbaum's direction, the White House said the Clintons would "cooperate fully" but reserved the right to withhold privileged information from investigators.

As for the issue of a full public disclosure of the files, Mrs. Clinton said in an interview with The Associated Press today, "I am bewildered that a losing investment which for us was significant — \$69,000, which is provable by the accountants — is still a topic of inquiry."

The White House press secretary, Dee Dee Myers, said the Clintons did not plan a public disclosure of the files. "Being forthcoming, which I think the President and First Lady have been, doesn't mean you have to turn over every single file," she said.

### Prosecutors Silent

John Russell, a Justice Department spokesman, said that John Keeney, a senior prosecutor, directed subordinates today not to discuss the matter, citing the confidentiality of Federal inquiries.

But law-enforcement officials said Federal investigators would seek any evidence required to complete their inquiries, and left open the possibility that the material could be subpoenaed if necessary. In that event, the President might be pitted against his Justice Department.

It is not yet clear how quickly the investigators will act. They have been stymied in their efforts to obtain access to Mr. Foster's diary, another newly disclosed record in the inquiry on his suicide. Their informal request for the diary has been rejected by the Foster family lawyer.

Over all, the recent developments related to Mr. Foster have created at Jittery atmosphere at the Justice Department. One source of tension has been the presence of close Clinton associates like Sheila Anthony, Mr. Foster's sister, who heads the department's Congressional Affairs Office.

In addition, Webster L. Hubbell, Mr. Clinton's golfing friend and Mrs. Clinton's Little Rock law partner, is the Justice Department's No. 3 official. Mr. Hubbell, whose father-in-law was a borrower from Madison Guaranty and whose law firm was once hired by Federal regulators to help clean up the troubled institution, has recused himself from investigative matters related to Mr. McDougal.

Mr. Gearan's statement of Monday night, issued in an apparent effort to address news reports that the Justice Department was investigating whether the files had been taken, has revived lingering questions about how the White House responded to Mr. Foster's death and handled papers left in his office.

The White House disclosure also brought a renewed focus to the conduct of the Justice Department as well as the United States Park Police and the Federal Bureau of Investigation, the law enforcement agencies that initially investigated Mr. Foster's death.

In the days after Mr. Foster died of a single gunshot wound to the head in a park overlooking the Potomac, Mr. Nussbaum, the White House counsel, supervised the White House handling of the inquiry into Mr. Foster's death. At the time, Mr. Nussbaum and other aides would not publicly discuss Mr. Foster's legal work for the Clintons and kept law-enforcement agencies from delving deeply into Mr. Foster's professional life.

As a result, those agencies, although they had suspected that the Arkansas land files had been in Mr. Foster's office, did not know for sure until the White House statement on Monday night.

A Park Police official said today that investigators had never been told that Mr. Foster had kept such a file, but added that it was unlikely that the documents would have aroused interest of investigators at the time anyway.

### Counsel's Supervision

Two days after the suicide, Mr. Nussbaum arranged with Justice Department lawyers working for Phillip B. Heymann, the Deputy Attorney General, to conduct an inventory of Mr. Foster's office. Mr. Nussbaum examined Mr. Foster's files and papers in the presence of law-enforcement investigators then, but would not allow them to read any papers.

Mr. Nussbaum determined that nothing in Mr. Foster's office was relevant to their inquiry except for a calendar and a partial log of incoming phone messages for the weeks preceding Mr. Foster's death. "I didn't have any problem with that," Maj. Robert Hines of the Park Police said today. "They were in a state of shock."

But other senior law-enforcement officials have been privately critical of the White House for so restricting the investigators and for the haphazard manner in which Mr. Foster's office was left unsealed for hours after his death. At the time, White House aides left the impression that Mr. Foster's secretary was the only person who had entered his West Wing office for an extended period after his suicide, but they have said in recent days that other people entered as well.

A White House official said today that two others who entered were Patsy Thomasson, an administrative aide and longtime Clinton associate, and Margaret Williams, Mrs. Clinton's chief of staff. The official said they had looked unsuccessfully for a suicide note and had left without taking anything.

Several former White House officials said today that the Clintons would probably be successful in invoking lawyer-client privilege to prevent the authorities from examining the papers found in Mr. Foster's office.

Clifford L. Alexander Jr., who served as White House counsel for President Lyndon B. Johnson, said the privilege continued even after the death of the lawyer. "It's up to the client to waive the privilege," he said.

But invoking that privilege could prove a political problem, since much of the public might infer that the Clintons had something to hide.

In addition, there is the problem of whether Mr. Foster should have been involved with the Clintons' private business after he joined the Government. Prof. Geoffrey C. Hazard of Yale Law School, a leading authority on legal ethics, said in an interview today that it would have been improper for Mr. Foster to have any continuing involvement with the Whitewater matter after taking office.

"It is improper to have a government lawyer exercising any responsibility over the personal property or private business affairs of a government official," Professor Hazard said.

He said that the matter should have been turned over to a private lawyer. If Mr. Clinton allowed Mr. Foster to retain some control over the matter while he was a government lawyer, that could constitute a waiver of the privilege by the President.

A year ago, Mr. Foster represented the Clintons when they sold their holdings in the Whitewater real estate venture back to Mr. McDougal.

After the stock transaction was completed, Mr. Foster was left to handle a lingering issue, Mr. McDougal's request for many Whitewater business records and tax returns.

Mr. McDougal has told associates that last June, a month before Mr. Foster's death, he left a message with Mr. Foster's White House office regarding Whitewater. A few days later, Whitewater's tax returns were sent to Mr. McDougal's lawyer.

Last year, when questions about Whitewater arose during the Presidential campaign, Mr. Clinton hired James Lyons, a friend and Denver lawyer, to look into Whitewater's finances.

Mr. Lyons, relying on banking records provided by the Clintons and other data, publicly reported that the Clintons had lost money in the joint venture.

White House aides have said that Mr. Lyons left a phone message for Mr. Foster the day he died but that the two men never talked to each other that day. Mr. Lyons has not returned reporters' telephone calls to his office.

# Hill Pressure Builds for Probe of Clintons' Whitewater Deal

WP  
12-23-93

By Susan Schmidt  
Washington Post Staff Writer

Pressure mounted in Congress yesterday for further investigation into dealings by President Clinton and his wife, Hillary Rodham Clinton, with a now-defunct Arkansas savings and loan, and circumstances surrounding the suicide last summer of former deputy White House counsel Vincent Foster.

Rep. Jim Leach (Iowa), the ranking Republican on the House Banking Committee, called on Attorney General Janet Reno to appoint a special counsel to take over a Justice Department investigation into possible wrongdoing at Madison Guaranty Savings & Loan and the Whitewater Development Corp., a real estate venture jointly owned by the Clintons and Madison's owner.

In the Senate, Minority Leader Robert J. Dole (R-Kan.) joined Sen. Alfonse M. D'Amato (N.Y.), the ranking Republican on the Banking Committee, in asking committee Chairman Sen. Donald W. Riegle Jr. (D-Mich.) for a hearing into Madison and Whitewater, saying questions about the Clintons' dealings with them

need ventilating." Riegle made no comment on whether he would conduct such a hearing.

A file on Whitewater was discovered in Foster's office after his July 20 suicide and was turned over to the Clintons' personal attorney, David E. Kendall, by White House counsel Bernard Nussbaum.

Clinton told wire service reporters in an interview yesterday that he did not know what was in the file, but if Justice Department investigators want to see it, "We'll do what we can to cooperate."

The file, Clinton said, "related to work [Foster] had done before he came to work at the White House on our behalf. . . . There was never any indication that anyone wanted to see it. Obviously, if anybody wants to—feels that there's some relevance to any ongoing investigation, we'll do what we can to cooperate."

But, Clinton said in response to a question, "I have no reason to believe at this time that anybody thinks there's anything in there relevant to any ongoing federal matter."

A Justice Department official said he knew of no subpoena issued for the file. But, he said, "We expect to obtain all relevant evidence."

Three Justice Department prosecutors were sent to Little Rock in late October to continue an inves-



tigation into Madison and White-water that was begun by the federal Resolution Trust Corp. Suspected activities at Madison cited by the RTC in its referral to the Justice Department were misuse of Madison funds for the benefit of local politicians and Clinton's 1984 Arkansas gubernatorial campaign.

In his letter to Reno, Leach said he wants to ensure that any documents removed from Foster's office are not destroyed. Leach and other Republicans on the House Banking Committee have begun an investigation of their own and sent staff members to Little Rock this week.

In an interview, Leach said that

Reno has been placed in "an uncomfortable; if not untenable, position of being both the chief law enforcement official of the United States and the chief legal adviser to the president."

Justice Department spokesman Carl Stern said that Reno, who has urged the restoration of an independent counsel law, saw no purpose in appointing a special counsel herself. "Anyone she appoints, the prosecutor is under her supervision and influence," Stern said. "To take the case away from the current career prosecutors . . . would be to create the very kinds of perceptions that she and Congressman Leach are trying to avoid."

# Clinton Releases Files on Land Deal

W.P. 12-24-93

*Access to Papers Is Limited to Justice Dept.*

By Ruth Marcus and Michael Isikoff  
Washington Post Staff Writers

President Clinton yesterday instructed his personal lawyer to turn over to the Justice Department all documents concerning the Clintons' investment in the Whitewater Development Corp., the White House announced yesterday.

The papers include files found in the office of deputy White House counsel Vincent Foster following his suicide in July. Although the files had been discovered two days after Foster's death, the White House only this week publicly disclosed their existence when it announced they had been turned over to David E. Kendall, a personal attorney for Clinton and his wife, Hillary Rodham Clinton.

"The president has voluntarily decided to release these documents for whatever relevance they may have to any Department of Justice law enforcement inquiries," White House communications director Mark Gearan said in a statement yesterday evening.

Gearan, who said the documents would be handed over "very soon," said the Justice Department had not requested the documents. But the president's move comes after a steady drumbeat of news stories about the handling of the Whitewater material and precludes the possibility of a subpoena from Jus-

ice Department prosecutors conducting a wide-ranging investigation into a failed Arkansas savings and loan that had close ties to Whitewater.

It also came shortly after Rep. Jim Leach (Iowa), ranking Republican on the House Banking Committee, sent Kendall a letter requesting that the files be turned over to his staff by next Wednesday for use in a minority staff investigation into the matter. A White House official said the material would not be made available to what he described as the "politically inspired Leach probe." The official also said the Clintons would not release the documents to the news media.

"Most people would grant that any president maintains the right to have his personal documents private," the official said.

Justice attorneys are investigating whether James B. McDougal, a longtime Clinton friend who owned the Madison Guaranty Savings & Loan, improperly diverted money into Whitewater, a real estate venture in which McDougal and the Clintons were partners. There are also allegations that Madison funds may have been used during the 1980s to pay campaign expenses and debts of Clinton and other leading Arkansas political figures.

The documents also are potentially relevant to a separate inves-

igation into the circumstances surrounding Foster's death. The U.S. Park Police concluded last summer that Foster, a law partner of Hillary Clinton and confidant of the president, shot himself because he was depressed. But the Justice Department recently has reopened the matter, in part because of media speculation that Foster may have been alarmed about the prospect of new and embarrassing disclosures about Whitewater or other matters he was handling for the president.

A senior administration official said last night that the material to be turned over goes beyond the files found in Foster's office and includes "every single document" in the Clintons' possession relating to Whitewater. This encompasses material gathered by their accountants and lawyers over the years, including that used to prepare a controversial report by Denver lawyer James Lyons released by the Clinton campaign last year. The Lyons report, commissioned to dispel media questions about the investment, concluded the Clintons lost \$68,900 on Whitewater.

The White House decision to refuse public release of the documents had been criticized by Leach, who on Wednesday called on Attorney General Janet Reno to appoint a special prosecutor to oversee the Madison and Whitewater probes. Citing what he said he views as suspicious transactions relating to Whitewater, Leach said in an interview yesterday that the "key question is whether the documents are made public or whether the White House uses the Justice Department as a

medium that may be embarrassing to the president."

Questions about Whitewater, a company set up in the late 1970s to purchase, develop and sell Ozark real estate, first plagued the Clintons during last year's presidential campaign. But they successfully defused the matter last year when they released the Lyons report. No documentation has ever been released to support that conclusion that the Clintons lost money on the venture, however, and Leach yesterday questioned whether the Clintons ever actually invested that much money given Clinton's relatively small salary as Arkansas governor.

Leach and other congressional Republicans also say they want to investigate allegations that Madison, the savings and loan owned by the Clintons' Whitewater partner, McDougal, received favorable treatment from Arkansas regulators. Madison's failure ultimately cost taxpayers at least \$60 million and some critics have suggested that could have been averted if Arkansas regulators had acted sooner.

The Clintons have emphatically denied any wrongdoing related to Whitewater. Gearan yesterday said that "at no time did any law enforcement official ever remotely suggest any impropriety. It was voluntarily decided to release the documents and I think the president concluded that this was an appropriate action at this time."

Asked in an interview Wednesday whether he would give the Whitewater files to Justice investigators, Clinton said he "would do what we

can to cooperate"—a statement that some took to indicate that he would comply with any Justice request for the information, and others interpreted as throwing a potential roadblock in the way of turning over the papers.

A senior official said there was lengthy debate within the White House over whether to turn over the documents, but officials ultimately concluded that the president's statement left them with little choice. "It became clear that if you don't do it, you seem to be hiding something," said the official.

Meanwhile, at her weekly news conference yesterday Reno indicated she was highly unlikely to grant

Leach's request to appoint a special prosecutor. Citing the same reasoning she has used to reject special counsels for probes in other sensitive cases, Reno said that—in the absence of a new independent counsel law—anybody she appoints would still be politically compromised.

"If I appoint a special prosecutor, it's still my prosecutor, and there will still be questions about that person's independence," said Reno. "If I'm going to be responsible for the outcome of an investigation, then I want to make sure that it's done the right way."

# Independent Counsel Urged in

## Arkansas Probe

W/P 1-3-94

*GOP Leaders' Call Rebuffed by White House Aide  
Stephanopoulos as Politically Inspired*

By Helen Dewar  
Washington Post Staff Writer

Senate Minority Leader Robert J. Dole (R-Kan.) and House Minority Whip Newt Gingrich (R-Ga.) yesterday urged Attorney General Janet Reno to appoint an independent counsel to investigate any involvement by President Clinton with a failed Arkansas savings and loan firm and a real estate venture in the state.

White House adviser George Stephanopoulos said there was "no need at this time for an independent counsel" and accused the Republicans of exploiting the issue for political reasons.

Federal authorities are looking into possible wrongdoing involving Madison Guaranty Savings & Loan, owned by Clinton friend James McDougal, and Whitewater Development Corp., owned jointly by McDougal, his then-wife Susan, and Clinton and his wife, Hillary Rodham Clinton, while Clinton was governor of Arkansas.

Questions include whether funds from the now-defunct thrift were diverted to Whitewater or to Clinton's 1984 gubernatorial campaign.

Appearing on NBC's "Meet the Press," Dole accused Reno of "dragging her feet" on appointment of an independent counsel and said "it's

high time that she did what she knows she should do."

Dole said he thought Madison Guaranty and Whitewater could be a "pretty serious issue" for Clinton but added that he believed the president would be cleared of any wrongdoing.

Dole, angry at a lengthy probe of the Iran-contra affair during the Reagan administration, has led a GOP effort on Capitol Hill to block reinstatement of the post-Watergate law providing for court appointment of independent counsel to investigate wrongdoing by high-level government officials.

Without the law, Dole said yesterday, Reno could use her authority as

attorney general to appoint an outside counsel to handle the case, which is currently being investigated by career government employees.

When a similar proposal was made by Rep. Jim Leach (R-Iowa), ranking minority member of the House Banking Committee, Justice Department spokesman Carl Stern said anyone Reno appointed would be under her supervision and influence, rather than serving independently by court appointment, as the law intended.

Unlike Dole, Reno supports restoration of the independent counsel law, which was approved late last year by the Senate and is slated for consideration this year by the House.

Gingrich, appearing on ABC's "This Week With David Brinkley," said he believed "there is no question that we need an independent counsel" on the Madison-Whitewater issue.

"If they're innocent, why don't they [the Clintons] go ahead and agree to an independent counsel to clear their name?" Gingrich asked. "I think the longer the Clintons avoid doing that, the more, frankly, people are going to suspect that there's a reason they don't want an independent counsel."

Dole, who previously had called for investigations by congressional committees, accused Democratic leaders of ducking the issue. "The Democrats aren't going to touch this," he said. "If it were a Republican, on the other hand, we'd have five or six hearings going on right now."

But Stephanopoulos, who appeared on the ABC program, said it

was the Republicans who were playing politics. "They've been fighting the independent counsel law for many years," he said. "Now that they sense that there might be some perceived political advantage to going after this, they're all for it all of a sudden."

Stephanopoulos said the case was examined during the presidential campaign and Clinton has given all relevant documents to the Justice Department. "No laws were broken," he said. "The Justice Department investigation will show that."

Last evening, as Clinton arrived in Washington from vacationing in Arkansas and South Carolina, White House spokesman Jeff Eller said turning the files over to the Justice Department was "an appropriate course of action."

"There's no basis for civil or criminal charges," Eller said.

# GOP Leaders Seek Counsel to Probe Clinton Investment

WSJ  
1/3/94

By JOHN HARWOOD

Staff Reporter of THE WALL STREET JOURNAL

WASHINGTON—Republican leaders in Congress turned up the political heat on President Clinton by calling for an independent counsel to investigate possible links between the president and a failed Arkansas savings and loan.

In separate television interviews, Senate Minority Leader Robert Dole and House GOP Whip Newt Gingrich called for Attorney General Janet Reno to appoint an outside counsel to examine the investment by the president and Hillary Rodham Clinton in Whitewater Development Corp. with James McDougal, the owner of now-defunct Madison Guaranty Savings & Loan.

"There are dozens of questions that need to be answered," Mr. Dole asserted on NBC News's "Meet the Press," accusing Ms. Reno of "dragging her feet" on the matter. "For the president's sake and for the sake of the integrity of the attorney general's office, she should move," the Kansas Republican said.

Mr. Gingrich, interviewed on ABC News's "This Week with David Brinkley," said there were "too many implications of breaking the law" for the attorney general not to act. "If [the Clintons] are innocent, why don't they go ahead and agree to an independent counsel to clear their name?" the Georgia Republican asked.

The White House immediately rejected the GOP demands. "There's no need at this time for an independent counsel," senior presidential adviser George Stephanopoulos said on the ABC program. He predicted that a current Justice Department investigation will show that "no laws were broken," and accused Republicans of seeking political advantage. A Justice Department spokeswoman reiterated Ms. Reno's previous assertions that the department's investigation is sufficient.

Mr. Clinton's investment with Mr. McDougal in Whitewater, an Ozark Mountain real-estate project on which the president says he lost about \$70,000, was the subject of controversy during the 1992 presidential campaign. But official interest has intensified since the disclosure that documents pertaining to Whitewater were removed from the office of Vincent Foster, the former deputy White House counsel and Clinton family lawyer, shortly after Mr. Foster's suicide in July.

The president has volunteered to turn over the Whitewater files to the Justice Department, which is looking at the investment as part of a broader civil and criminal investigation into Madison Guaranty. Ms. Reno says the investigation is being handled by career department prosecutors, and that her appointment of an outside counsel would increase the perception of political interference, not diminish it.

Rep. Jim Leach (R., Iowa) and some other Republicans have previously called for an independent counsel, suggesting the Justice Department might be used to shield Mr. Clinton from accountability. But the statements by GOP leaders on the issue suggest that, as Mr. Gingrich put it, "Whitewater Development is not going to go away" as a political, if not legal, distraction. Fueling Republican rhetoric is the fact that the Democratic chairmen of the House and Senate Banking committees have declined to hold hearings.

"The Democrats aren't going to touch this," Mr. Dole said. "That's why we need the attorney general to act. . . . The president probably will be cleared and this will not be an issue, but let's go ahead and get it done."

WST 1/4/94

## Asides

### *Clintons' Hold Button*

It turns out that the Clintons' "voluntary" turn-over of Arkansas business documents to the Justice Department will have to wait for perhaps two weeks until their lawyers "catalog" the material, the White House announced yesterday. Something about

there being so much stuff and wanting to make "one final sweep to make sure they have everything we've agreed to turn over," says adviser Bruce Lindsey. Maybe an FBI agent should sit in. Ten years ago, there'd have been cries for the National Archivist to handle such sensitive documents. Different times, different standards.



# Clintons Continue to Gather Land Deal Files

By GWEN IFILL  
Special to The New York Times

WASHINGTON, Jan. 3 — Two weeks after President Clinton and his wife, Hillary, vowed to turn over all the personal records relating to their investment in a failed Arkansas land deal, their lawyers are still assembling the files before sending them to the Justice Department.

White House officials said today that the Clintons had authorized their personal lawyer, David Kendall, to give Justice Department investigators files that were kept in the office of Vincent W. Foster Jr., the deputy White House counsel who killed himself on July 20.

But Mr. Kendall is also retrieving related documents that were stored in Mr. Clinton's Little Rock campaign archives. Administration officials say the contents of those files were made public during the 1992 Presidential campaign in response to reporters' inquiries about the land deal. The files will be ready for delivery to the Justice Department "in a couple of weeks," White House officials said.

"Mr. Kendall has been collecting and cataloguing the records and making routine preparations for their delivery to the department," said Dee Dee Myers, the White House press secretary.

## A painstaking disclosure process is described.

"This includes indexing and verifying that accurate and complete copies of all documents are made. The purpose of this process is to insure a complete and accurate delivery of the documents."

After at first suggesting in a news briefing that the White House counsel's office had been overseeing the compilation of the files, Ms. Myers later corrected herself, and said the counsel's only role had been to send the documents to Mr. Kendall in August.

"We handed over the Whitewater documents in support of an ongoing investigation into Madison Guaranty," she said. "There is no other investigation that we know of ongoing, and I don't think we have anything to add to what we've already said about this."

Whitewater Development was at the heart of a failed real estate venture

that the Clintons say cost them \$69,000 in the 1980's.

The Clintons were partners in the venture with James McDougal, a businessman who headed the Madison Guaranty Savings and Loan in Arkansas. Madison later failed and is under investigation.

Mr. Clinton refused to answer questions about the matter today. When asked whether he would support naming a special prosecutor to investigate the land deal, he said: "I have nothing to say about that. I've said we'll turn the records over. And there's nothing else for me to say about that."

Republicans, including Senator Bob Dole of Kansas, the minority leader, and Representative Jim Leach of Iowa have been calling for an independent investigation into the Clintons' involvement in a plan to create a vacation community in the Ozarks owned by Whitewater.

Mr. Dole renewed his call for a special prosecutor today in a letter to Attorney General Janet Reno.

Ms. Reno has said there is no need for such a person because she has appointed three career prosecutors to look into the matter, including a former United States attorney chosen under a Republican President.

NYT 1/4/94

## White House Hopes to Avoid Leaks of Clinton File

By GWEN IFILL

Special to The New York Times

WASHINGTON, Jan. 5 — Seeking to insure that documents related to President Clinton's role in a failed Arkansas real estate development remain secret, the White House has requested that the Justice Department subpoena the papers and place them under Federal protection.

David Kendall, the Clintons' personal lawyer, advised the President to seek the subpoena after Mr. Clinton decided to turn over records on the transactions to the Justice Department on Dec. 23.

The White House acknowledged the existence of the subpoena tonight in a statement that announced that the bulk of the documents would be delivered to the Justice Department on Thursday.

The subpoena, served on Dec. 24, was requested to preserve the "privacy of the process" involving an investigation into the real estate concern, the Whitewater Development Corporation, the statement said.

The subpoena discourages the possi-

bility that details of the investigation would be leaked to reporters, said Bruce R. Lindsey, a senior adviser to Mr. Clinton who has been responding to questions on the real estate matter on the Clintons' behalf. It would also make it more difficult for Congress to obtain the records, which members have been seeking for their own investigation.

### Penalties for Disclosure

"What it means is, if somebody were to leak them, there would be penalties connected with that," Mr. Lindsey said. He added, "If I'm engaging in a criminal investigation, I don't want the investigation I have to be in the press."

The existence of the subpoena would not prevent the Clintons themselves from making disclosures about the documents or from making them public, a lawyer not involved in the case said tonight.

But it would serve as an added barrier to their unauthorized release by Justice Department lawyers, because such a step would become a violation of criminal procedures. The existence of

the subpoena could also make it more difficult for outsiders to obtain the documents under the Freedom of Information Act, the lawyer said.

Mr. and Mrs. Clinton were partners in the Whitewater development plan with James McDougal, a political supporter who owned Madison Guaranty, an Arkansas savings and loan. When the institution failed, a Federal investigation was begun into its banking and investment practices.

### Denial of Wrongdoing

The Clintons have always maintained that they were involved in nothing improper in their investment in Whitewater. In fact, they say they lost \$69,000 on the plan to develop a retirement community in the Ozarks.

The Justice Department spokesman, Carl Stern, would not comment tonight about the subpoena or the delivery of the Clinton files. Mr. Kendall, the Clintons' lawyers, did not return a telephone message left at his Washington office.

NYT

1/6/94

# Subpoena Issued for Clinton Files

## White House to Comply in S&L Probe

By Michael Isikoff and Ann Devroy  
Washington Post Staff Writers

The White House said yesterday that the Justice Department issued a previously undisclosed subpoena on Dec. 24 to President Clinton's lawyer for records relating to the Whitewater Development Corp. and that it will begin turning those documents over to federal prosecutors today.

White House aides said that David Kendall, personal lawyer to the president and Hillary Rodham Clinton, first requested the subpoena in discussions with Justice Department lawyers on Dec. 23. That was the day the White House announced it was voluntarily turning over the records, some of which were discovered in deputy White House counsel Vincent Foster's office after his suicide last July 20.

White House aides said yesterday that they sought the subpoena to protect "the integrity" and "privacy" of the documents. "The staff discussions of this," said one official, "were that we should ask for a subpoena because then it becomes a crime to leak them and maybe that would keep them from being leaked." News organizations as well as some GOP members of Congress have been looking into the Clintons' relationship with the Whitewater real estate development company.

But the White House did not publicly disclose the subpoena until yesterday because, aides said, they did not consider it relevant. According to yesterday's White House statement, the subpoena requires that all the documents must be turned over to the Justice Department by Jan. 18.

Federal law enforcement sources said yesterday that when Kendall called the Justice Department Dec. 23 to seek a subpoena, officials informed him they had already begun drafting one. White House officials yesterday confirmed that and said that Kendall then asked that the subpoena be broadened to cover more documents.

The draft subpoena, sources said last night, showed that the Justice Department lawyers had already decided to seek access to the documents for use in an ongoing criminal probe into a failed Arkansas savings and loan as well as a separate department investigation into the circumstances surrounding Foster's death.

White House aides said the grand jury subpoena, signed by a deputy clerk in the federal courthouse in Little Rock, Ark., also requests material on Madison Guaranty Savings & Loan. The now defunct Arkansas thrift is the primary focus of the

department's investigation into allegations that depositor funds were improperly diverted and possibly benefited Whitewater, a firm jointly

owned by the Clintons and Madison's owner, James McDougal, as well as Clinton's 1984 gubernatorial campaign.

The Clintons repeatedly have said that McDougal handled all of Whitewater's affairs and that they have no knowledge of any improper or criminal activity by him.

But they have resisted calls from the news media and Congress to publicly release their documents on the Whitewater venture, an investment they have described as a money loser.

White House aide Bruce Lindsey said yesterday that Clinton directed Kendall to negotiate the matter with the Justice Department because "we wanted to be cooperative. . . . The president is trying to be helpful to the criminal investigation" regarding Madison, he said.

But Lindsey said the White House would continue to resist any request that the documents be publicly disclosed, saying "these are their private records, they see no reason to publicly release them."

Yesterday's developments are the latest in a series of partial and sometimes contradictory White House statements about Whitewater that have created controversy and spurred calls by members of Congress and others for the appointment of an independent counsel in the case.

The existence of the documents related to Whitewater and Madison found in Foster's office—and the fact that they had been removed by White House aides after his death—was first disclosed in news accounts last month. That disclosure was followed by the Dec. 23 announcement that Clinton had directed their release to the Justice

director Mark Gearan said that day that the Justice Department had not requested them. Gearan said last night that "neither the president nor I" nor other senior aides were aware of the pending subpoena when he made that statement.

On Sunday, White House senior adviser George Stephanopoulos said on ABC's "This Week With David Brinkley" that "the president has turned over all the documents to the Justice Department."

But on Monday, White House press secretary Dee Dee Myers acknowledged that was not the case. Instead, Myers said, the documents—including campaign files and personal financial records in Arkansas—were being "catalogued" and that no documents would be turned over for a couple of weeks.

White House officials said they are turning over more than Justice initially wanted. They said the documents include the Foster files, bank statements about Whitewater's account at Madison, "three or more boxes" of campaign-related material. Also included is material

compiled for a report on Whitewater prepared by James Lyons, a lawyer for the Clinton campaign, to respond to media inquiries about Whitewater after the Clintons' involvement in the company came to light during the 1992 presidential primaries.

Lindsey said the subpoena, a copy of which he declined to release, also covers records relating to Capital Management, a Small Business Administration-licensed investment firm run by David Hale that made a \$300,000 loan to Susan McDougal, who was then married to Madison owner and Whitewater partner James McDougal.

ficials. It was the RTC that first requested a department investigation into Madison in September 1992.

Earlier yesterday, the White House had dismissed as groundless renewed calls from congressional Republicans and newspaper editor for the appointment of an independent counsel in the case. "There are no allegations that the Clintons have done anything wrong... There's no evidence to suggest they have done anything wrong. What's the charge?" spokeswoman Myers said.

"What this is is a Republican witch hunt," said Paul Begala, one of Clinton's political advisers.

Lindsey said the Clintons have no such records. But the request in-

volves another part of the Justice Department investigation that also potentially touches on the president. Hale, a former Arkansas municipal judge and owner of Capital Management was indicted on charges of defrauding the SBA. He has alleged that he was pressured by Clinton and James McDougal to make the loan to Susan McDougal as a means of shoring up Madison's books. James McDougal and Clinton have adamantly denied the accusation.

As a further sign of Justice Department action in the case, federal prosecutors also recently subpoenaed records on Madison from the Resolution Trust Corp., the federal agency disposing of the failed thrift and its assets, according to RTC of-

# ***Reno to Ask for Special Counsel In Clinton Land Deal, Aides Say***

## ***Independent Prosecutor Law Must Be Renewed***

By NEIL A. LEWIS  
Special to The New York Times

NYT 1-7-94

WASHINGTON, Jan. 6 — Attorney General Janet Reno has decided to ask a court to appoint an independent prosecutor to investigate President and Mrs. Clinton's Arkansas land investments as soon as Congress enacts a law renewing her ability to do so, senior Justice Department officials said today.

Ms. Reno herself today came close to saying she would use the law to ask a panel of judges to appoint an independent counsel to investigate allegations surrounding the Clintons' investment in the Whitewater Development Company of Arkansas before Mr. Clinton became President.

In a prepared statement, Ms. Reno spoke both about the Whitewater investigation and the need to renew the law that would allow her to petition a court to name an independent investigator. Senior Justice Department officials said she and her top aides had already concluded that seeking an independent prosecutor would be unavoidable if the law was passed.

### **Decision Hangs on Wording**

But Ms. Reno and her aides said she could not make a flat public promise to do so because the bill was still making its way through Congress and she did not know how the final law would read.

The decision to seek a court-appointed investigator insures that the Whitewater issue will move to a new level of scrutiny, thus adding impetus to calls in Congress to move quickly to renew the Watergate-era independent prosecutor law, which expired in 1992.

The old law permitted Federal judges to appoint independent prosecutors to investigate assertions of Government wrongdoing free of Justice Department oversight.

### **Knowledge of Subpoena at Issue**

Ms. Reno spoke amid indications that the White House may have issued misleading statements about the circumstances under which it decided to turn over to the Justice Department files that had been removed from the office of Vincent W. Foster Jr., a White House lawyer, after he killed himself on July 20.

White House spokesmen said on Dec. 23 that Mr. Clinton had decided on his own to voluntarily turn over the documents to law enforcement officials. But some Administration officials said today that he did so only after learning that the Justice Department had informed his lawyer it was preparing to subpoena the papers as part of a criminal investigation into a failed Arkansas savings and loan that was owned by the Clintons' partner in Whitewater.

The officials said that the President's personal lawyer, David Kendall, spoke with Justice Department lawyers that day about an impending subpoena.

Yet White House officials insisted today that neither President Clinton, Mr. Kendall or anyone else at the White House knew of the Justice Department

*Continued on Page A19, Column 1*

preparation of the subpoena before Dec. 21, when Mr. Clinton ordered the documents to be handed over.

"The President didn't know; his lawyers didn't know; the White House didn't know that there was anything prepared until after he made the decision," George Stephanopoulos, a senior adviser to Mr. Clinton, said today.

Mr. Stephanopoulos said he did not know when Mr. Clinton had learned that the subpoena was being prepared, and said he was not sure that the President ever did know.

A senior White House official who declined to be identified said that Mr. Clinton decided on the morning of Dec. 21 to give the Whitewater files to the Justice Department and had Deputy White House counsel Joel Klein convey that message to Mr. Kendall. Mr. Kendall and Mr. Klein then decided it was best to ask the Justice Department to request the documents under a subpoena in order to protect their confidentiality.

When Mr. Kendall called the Justice Department with his offer, the White House official said, he learned the Department was already preparing a subpoena for the papers.

The Senate already has passed a bill that would renew the independent counsel law, and the House is set to take final action on a different version in the next few weeks. President Clinton has repeatedly said he would sign such a bill into law. Republicans had opposed renewal the old law because of the special prosecutor Lawrence K. Walsh's investigation of members of two Republican Administrations in the Iran-contra scandal. But with a Democrat in the White House, Republicans are now supporting the bill.

Ms. Reno also said she was unwilling to use a Justice Department regulation which would leave the selection of a special prosecutor to her because it would be wasteful for her to name someone if she would soon be asking a panel of judges to do so.

She said that if the law is renewed as expected, "and depending on the language of the statute and the evidence at the time, there might be the possibility for me to petition the court for the appointment of an independent counsel and the court might appoint even a third lawyer."

She had earlier said that even if she chose someone of impeccable reputa-

tion, that person would not be seen as independent and she would ultimately be held responsible. For that reason, she would leave the investigation in the hands of career prosecutors in the Justice Department for the time being.

#### Savings and Loan Seized

Mr. and Mrs. Clinton were partners in Whitewater with James B. McDougal and his wife, Susan who were longtime political supporters. Mr. McDougal also owned Madison Guaranty, an Arkansas savings and loan association which was seized by Federal regulators in 1989 at a cost of more than \$60 million in public money.

Investigators are exploring the possibility that while Mr. Clinton was governor of Arkansas, he saw to it that Madison's weak financial condition was not examined too closely in exchange for personal loans from the bank which also might have been used to keep Whitewater afloat.

Representative Jim Leach, an Iowa Republican who has been pressing Ms. Reno to quickly name an independent prosecutor under Department regulations, said today that waiting until the special counsel law is renewed would only help the President politically.

Mr. Leach, who is the ranking Republican on the House Banking Committee, said that Ms. Reno is correct that a prosecutor appointed by judges would be preferable to one named by her. But he said there is a strong need to act quickly because the statute of limitations will soon run out for some civil violations of the law governing the bailout of the savings and loan industry.

Under the 1989 law, he said, the Government cannot bring civil complaints for acts of willful misconduct more than five years after a savings and loan has been seized by the government.

Madison was placed under conservatorship in March, 1989 and thus, he said, the statute of limitations would run out on such offenses in March of this year.

A law renewing Ms. Reno's ability to petition a court for a special counsel would not be enacted until the end of February at the earliest, he said and, "It would be very difficult for someone to be named by the court to raise these concerns by the first week of March."

Criminal acts have a 10-year statute of limitations.

"Her approach is very defensive of the President," Mr. Leach said.

# President's Lawyer Attempts to Limit Justice Dept. Use of Whitewater Files

WP  
1-8-94

By Ann Devroy  
Washington Post Staff Writer

President Clinton's private lawyer attempted to negotiate unusual limits on how the Justice Department could use files about Whitewater Development Corp. that the White House had agreed to turn over, officials said yesterday.

David Kendall, Clinton's lawyer, was rebuffed when he asked department officials to agree they would not share the material with the Office of Professional Responsibility, the unit of the Justice Department that is investigating the handling of the suicide last July of White House deputy counsel Vincent Foster.

Such an agreement would have been extraordinary, according to a former federal prosecutor, because the Justice Department is generally free to share subpoenaed grand jury material with any of its attorneys who have a legitimate need for it as part of an investigation into potential criminal conduct.

The details of the discussions between Kendall and the Justice Department were described yesterday by White House officials, who early this week had disclosed that files relating to the Clintons' partial ownership of Whitewater Development Corp. were being given to the Justice Department under a subpoena issued Dec. 23.

The White House had not disclosed the subpoena when it announced that day it would voluntarily deliver its files. On Wednesday, when the subpoena was disclosed, White House officials said that Kendall had sought the subpoena to protect the material from being given to news organizations, Congress or others. Releasing subpoenaed material is a criminal violation.

A senior administration official said yesterday that Kendall "did say to the Justice Department that he did not want these documents to go to OPR. He wanted them protected from that kind of dissemination." The official said that Kendall's position to Justice was "they should not be turned over to OPR unless OPR went to court to seek its own access to the records. There was no indication why Kendall sought to deny OPR access to the documents."

A Justice Department spokesman would not comment on Kendall's request yesterday. But the former federal prosecutor with extensive Justice Department experience said that what Kendall was seeking "is never done. When the Department of Justice subpoenas materials, it subpoenas materials. Period. They can share it" with any other part of the department authorized to conduct criminal prosecutions.

The White House had agreed to turn material over to the grand unit of the Justice Department, which is investigating Whitewater and a failed Arkansas thrift, Madison Guaranty Savings & Loan, which was owned by James McDougal. McDougal and his wife Susan were partners in Whitewater with Bill and Hillary Clinton.

Among the material to be turned over is a Whitewater file found in Foster's office the day after his suicide. That file was sent by the White House counsel's office to Kendall as "personal business" of the Clintons when the White House was separating government files, personal files and personal effects to go to Foster's family. The White House made the determination of what material went



into which category, and the existence of the Whitewater file emerged only last month.

White House senior adviser George Stephanopoulos said there was no sinister intent in Kendall's attempt to keep the documents from OPR. "We are going to do anything we can to cooperate with any legitimate investigation but at the same time we are going to try to protect the integrity of the documents and make sure they are not abused," he said.

The White House yesterday held firm against the need for an outside investigation of Whitewater, but senior aides said the issue, which caused extensive internal debates, may have to be revisited.

Stephanopoulos and counselor David R. Gergen both said yesterday that the White House sees no need for either a special prosecutor appointed by Attorney General Janet Reno or by an independent counsel that would be appointed if the independent counsel law is reauthorized by Congress.

Republicans yesterday tried to keep up the political pressure on the White House, renewing allegations that the Justice Department probe of Madison and its connections with Whitewater Development was being manipulated by the White House and could not be thorough unless conducted outside the Justice Department.

Reno, in letters to Senate Minority Leader Robert J. Dole (R-Kan.) and Rep. Jim Leach (R-Iowa), repeated her position against appointing a special prosecutor. Both had made such a request.

The Justice Department investigation, Reno said, is being run by career professionals "in a fair, thorough and impartial manner, fully consistent with the dictates of professional law enforcement." She restated her position that appointing a special prosecutor on her own would not still the questions of impartiality, and would slow the investigation.

But sources in the legal community said yesterday that the administration has begun compiling what one called "very informal" lists of potential appointments should Reno change her mind. One source said, "Some calls have been made into the legal community among those who would have the stature to do this

about whether they might be available." The source said it was unclear whether the calls were authorized by anyone at the Justice Department or simply an informal operation.

And a senior administration official said that the issue may have to be revisited if "the political landscape does not get any better." The White House is hoping that Clinton's nine-day overseas trip, including his summit in Moscow, will, as one aide put it, "replace Whitewater on the front page" and relieve the political pressure over the issue.

The top commandos in the administration's damage-control effort were out in force yesterday, led by Gergen, who appeared on television programs to say the Clintons had done nothing wrong, that the White House was being "as cooperative as possible to clear the air" and that attacking the president over the issue amid the personal tragedy over the death of his mother Thursday was "cannibalism."

"I just have to tell you," Gergen said on NBC's "Today" show, "that as the president goes home to bury his mother, to have the political opposition on the warpath, hammering away raising all sorts of questions about what has happened in this town. Where is the decency? There is a cannibalism that's loose in our society in which public figures, such as the Clintons, could try to come to this town to do something good for the country and then they get hammered away."

A senior official said that the White House had a series of debates over whether to call for a special prosecutor, and that the conclusion "for the time being" is that there are more negative potential repercussions than positive. The three major reasons why such a move could hurt the president, the official said, was it would elevate the issue to a more serious level, would risk a "runaway prosecutor" and would ensure the issue would return in some form when the probe was completed.

On the positive side, sources said, calling for a special prosecutor would demonstrate Clinton's willingness to have a more independent probe, could effectively send the issue underground during the probe, and could give more credibility to a finding that there was no wrongdoing than would a similar

finding from a regular Justice Department investigation.

Unless and until Congress passes the independent counsel law, which expired in December 1992, the only route to a special investigation is a Reno appointment. Democrats and Republicans have predicted quick passage of the law after Congress returns later this month.

Last March, the House Judiciary Committee opposed the bill when the panel endorsed it on a party-line vote. They have criticized the \$35 million investigation that Lawrence E. Walsh conducted into the Iran-contra affair.

"Thanks to Whitewater, the Republicans have become converts," said Rep. Barney Frank (D-Mass.), a cosponsor of the bill. "I'm impressed with the flexibility of Senator Dole at this stage of his career to do a complete reversal on it."

Last November, the Senate approved its version of independent counsel legislation, 76 to 21.

Republicans have pressed for a requirement that the Justice Department seek independent counsels to investigate allegations against members of Congress. Both the Senate and House Judiciary Committee scuttled what Frank termed "automatic coverage" of lawmakers.

Frank said that members of Congress were covered under the old law—and would be under the new one. More than a dozen times during the Reagan and Bush administrations, he said, Republican attorneys general declined to seek an independent counsel because federal prosecutors faced no ostensible conflict of interest in investigating lawmakers.

In a related matter, House Minority Leader Robert H. Michel (R-ILL) urged Reno to ask Clinton "and any others under investigation [to] agree

to waive the statute of limitations so that an investigation can be fully and properly conducted."

A Republican leadership aide said that a seven-year limit on some civil violations that could apply in the Madison case expires in March.

In Little Rock, Ark., prosecutor Donald Macay told U.S. District Court Judge Stephen M. Reasoner that he plans to formally ask that a separate grand jury be impaneled to consider the Madison investigation. Macay said that a second grand jury is needed because the court's regular grand jury does not have time to handle the case.

"It's a time problem, which is causing hardships for individual members of the grand jury," Macay said.

The term of grand jury currently impaneled runs out in May and grand jurors normally meet one Tuesday a month and additional days depending on the workload. Reasoner told him to file a formal request with the court.

Macay also told Reasoner that he will seek a superseding indictment in the coming weeks against David Hale, a former Little Rock municipal judge who is scheduled to stand trial March 28 for defrauding the Small Business Administration. Hale has publicly charged that Clinton was among those who pressured him to make an improper SBA loan to a company owned by Susan McDougal, one of Clinton's partners in Whitewater.

*Staff writers Kenneth J. Cooper in Washington and Susan Schmidt in Little Rock contributed to this report.*

# 9 Democrats Join Call for Prosecutor

*Clinton Aides Reconsider Whitewater Stance*

WP 1-12-94

By Michael Isikoff and Ann Devroy  
Washington Post Staff Writers

Nine Democratic senators have joined the call for Attorney General Janet Reno to appoint a special prosecutor to investigate President Clinton's investment in an Arkansas real estate development firm, intensifying the debate among White House aides yesterday about whether Clinton should abandon his opposition to such a move.

Administration sources said yesterday that the White House is now reconsidering its position that a special prosecutor is unnecessary. A change in that view would be portrayed as a demonstration that the president has nothing to hide amid the mounting questions about his investment in the Whitewater Development Corp. and its relationship to a failed Arkansas savings and loan.

After weeks of depicting calls for a special prosecutor as partisan politics by Republicans, White House aides acknowledged that argument virtually collapsed this week when such Democrats as Sen. Bill Bradley (N.J.), Sen. Daniel Patrick Moynihan (N.Y.) and Sen. Joseph I. Lieberman (Conn.) said they favored an appointment to bolster public confidence, even though none said he believed the president had done

anything wrong. In reality the debate over whether to yield to calls for a special prosecutor started even before the first Democrat endorsed it.

Clinton offered the first public hint at a reevaluation last night in an interview with CBS News. Noting that he has already agreed to turn over Whitewater files to the Justice Department, he said: "We gave it all to them. Then people said that's not enough."

"So I think we have to evaluate that and see where we are. The most important thing to me and the most important thing to the American people is I'm completely relaxed about this because I didn't do anything wrong," Clinton said, "except I made a bad business deal, which a lot of people have done in life."

Aides stressed yesterday that no final decision has been made. Some of them have argued that appointment of a special prosecutor would be a political embarrassment and a needless capitulation to a news media and political feeding frenzy.

The administration Whitewater damage-control team, which stayed behind during the president's nine-day diplomatic trip to Europe, met throughout the day at the White House in an effort to decide whether to drop opposition to the appointment of a special prosecutor.

The comments of the Democratic senators have lent an air of inevitability to something the president and Hillary Rodham Clinton have staunchly resisted for weeks. The issue on the table yesterday was whether the president should quickly bow to these demands in an effort to minimize the political fallout of a reversal or continue to resist and argue that his decision to give the Justice Department the records it wants is sufficient.

In his interview with CBS, Clinton said that "All the federal investigators in the world have looked into this. Not a single soul has alleged that I've done anything wrong, and so it is bewildering to me why in the face of all the investigations that have been done . . . that it keeps being stirred."

Complicating the issue further is the strong and frequently repeated public position taken by Reno against appointing a special prosecutor.

Reno's chief spokesman, Carl Stern, said yesterday that, while the attorney general remains concerned that an appointment would disrupt her department's ongoing investigation into Whitewater, "the attorney general has not foreclosed any option. She has simply indicated what she believes is the right thing to do. If circumstances should change, I'm sure she'll assess the situation and do what she thinks is right."

The developments yesterday underscored the politically charged nature of the Whitewater issue and the extent to which it has begun to preoccupy senior White House staff members even while the president is in the middle of his European trip. Sources said Clinton's top aides were taking serious soundings of leading Democrats in Congress on the issue. One source said there were "substantial arguments being

made" that the president's current position on the issue has little political support among Democrats.

The chorus among Democrats for the appointment of a special prosecutor began Sunday with Moynihan and grew louder Monday when Bradley released a statement saying, "There should be only one goal in this matter, to get all the facts out." Bradley said he favored acting under an independent counsel law, but in the absence of such an act, "I believe this goal can best be achieved by the appointment of a special prosecutor, provided that the allegations meet the threshold test under the law."

Under her existing regulatory powers, Reno could appoint a special prosecutor who would still be accountable to her. Such a move is currently the only recourse for those seeking an independent investigation. The independent counsel law, under which a panel of three federal judges made such appointments, expired in December 1992. The Senate has passed legislation reauthorizing the act, and the House is expected to vote on a similar bill next month.

Yesterday, Lieberman and Democratic Sens. Bob Kerrey (Neb.), J. James Exon (Neb.), Tom Harkin (Iowa), Carol Moseley-Braun (Ill.), Russell Feingold (Wis.) and Charles S. Robb (Va.) joined the list calling for a special prosecutor, most in response to news media inquiries. Feingold, in a statement, criticized the White House handling of the issue, saying "there have been some mistakes in responding to initial inquiries."

While stressing that he has seen "no evidence" of wrongdoing by the Clintons, Feingold added: "I do not believe it serves their interests or the interests of the nation to have any sort of shadow or questions

about whether an unbiased investigation has been conducted."

Meanwhile, yesterday, Republicans kept up the pressure, calling on federal officials investigating Madison Guaranty Savings & Loan—the Arkansas thrift that had close ties to Whitewater—to seek agreements that would extend the March deadline for filing any civil claims arising from the probe.

The letter signed by eight Republicans, including Senate Minority Leader Robert J. Dole (Kan.) was sent to Reno and to Deputy Treasury Secretary Roger C. Altman, acting chief of the Resolution Trust Corp., the agency disposing of failed S&Ls.

Madison failed in 1989, and the five-year statute of limitations on civil fraud actions began running when the government took it over. There is a 10-year statute of limitations on criminal offenses.

The Justice Department is investigating allegations that Madison illegally diverted depositor funds to Whitewater accounts to pay off Clinton's campaign debts from his 1984 gubernatorial race. There have also been published suggestions that Clinton, while governor, gave lenient treatment to Madison, failing to quickly close the thrift when there was ample evidence of its insolvency—a delay that helped swell the ultimate taxpayer cost to \$60 million.

Paul Begala, one of Clinton's political advisers, tried to step gingerly around the fact that members of the president's own party have helped undermine his opposition to a special prosecutor. "They're good senators, they're good Democrats," Begala said. "But at the same time I have to say I am frustrated by this whole line of reasoning . . . that starts with 'President Clinton did nothing wrong' and concludes with

'Let's get a special prosecutor.' That does mystify me."

Reno originally stated her opposition to the appointment of a special prosecutor as a matter of principle: Whomever she appointed would be ultimately accountable to her and would not be seen as "truly independent." Reno has said she wants to wait for Congress to enact a new independent counsel law and has ~~hinted~~ that she might then seek a court-appointed counsel to take over the Whitewater probe.

But in recent days, Reno and Justice Department officials have also argued that appointing a special prosecutor now would cause significant disruption to the department's current investigation of Madison and Whitewater, which is being conducted by three career prosecutors in Little Rock, Ark.

Stern noted yesterday that anybody Reno selected now as special prosecutor could not continue to serve as independent counsel because the proposed new statute, as it passed the Senate and is expected to pass the House, forbids the appointment of a "public officer." As a result, Stern said, the judicial panel would be required to name a new independent counsel who would essentially have to start from scratch.

"To have to supersede someone who has just arrived would throw a further monkey wrench into the proceedings at a time when there is momentum that is being built up," said Stern. If Congress truly wants an independent investigation, he said, "why don't they just pass the law? This could be done in a couple of weeks."

---

*Staff writers Dan Balz and Susan Schmidt contributed to this report.*



# WSJ 1-13-94 Clinton Seeks Special Counsel On Whitewater

## President Is Backing Down In an Effort to Protect The Rest of His Agenda

By JEFFREY H. BIRNBAUM

Staff Reporter of THE WALL STREET JOURNAL  
WASHINGTON — President Clinton, buckling under intense bipartisan pressure, called for the appointment of a special counsel to look into his controversial investment in Whitewater Development Co.

White House aides said the president's turnabout was a political judgment: If something weren't done to quiet the clamor over Whitewater, none of the president's other priorities would be heard. In recent days, even Democratic lawmakers were asking the president to open his failed real-estate investment to more scrutiny.

"We still know the Clintons didn't do anything wrong," asserted White House aide George Stephanopoulos, adding that the president's call for Attorney General Janet Reno to appoint a special counsel was "rewarding irresponsible allegations." But at a news briefing where the president's decision was announced, he added, "This controversy is becoming too much of a distraction."

Confronted with the president's request, Ms. Reno reversed her opposition to such a move, saying: "Sometimes we have



Bill Clinton

### Awkward Situation

Hillary Rodham Clinton's central role in the Whitewater controversy raises questions for Republicans and Democrats alike. Article on page A20.

to go beyond what is generally appropriate simply to assure people that we have gone the extra mile."

Ms. Reno added that she hadn't talked to anyone in the White House yesterday about the president's request. A department spokesman said she read the letter in which the White House asked her to name a special counsel only five or 10 minutes before it was made public.

The attorney general said the special counsel would be appointed "as soon as possible," but didn't say whom she would choose. The special counsel will report to Ms. Reno but operate independently of the Justice Department. The counsel will have the power to issue subpoenas and, if necessary, convene a grand jury.

But even as the administration was moving toward calling for a special counsel, a step Mr. Clinton resisted for weeks, Republicans on Capitol Hill said they wanted more. GOP leaders in the House and Senate said they would seek to create special committees that would plumb the many mysteries that still swirl around the failed Arkansas real-estate company.

"In my view, appointment of a special counsel doesn't take away our responsibility in Congress," said Senate Minority Leader Robert Dole of Kansas. "We need to determine the answers to all the questions that have been raised. We must meet our responsibility, [just] as the executive branch must meet its responsibility."

The issue won't die with the president's announcement. While the White House said Mr. Clinton would turn over his Whitewater files to a special counsel, he still doesn't intend to give them to any congressional committee or to the public at large. "Gosh no," Mr. Stephanopoulos said in the interview. The special counsel's report, he said, would be the vehicle to clear the air on the matter.

The president had previously agreed to turn over his Whitewater documents to the Justice Department, which is looking into the Arkansas company as part of a broader

**Inquiry into Madison Guaranty Savings & Loan, a failed Little Rock, Ark., thrift owned by James McDougal. Mr. McDougal was a business partner of Bill and Hillary Rodham Clinton in Whitewater in the 1980s and was a political supporter of Mr. Clinton when he was Arkansas governor.**

Ms. Reno wouldn't define the scope of the independent counsel's investigation. The existing probes by department officials will continue until the appointment of the special counsel, who will decide whether to use the current investigators, the department spokesman said.

A variety of accusations and suspicions have arisen about the dealings of Mr. McDougal and the Clintons, including questions about tax payments and interference in bank regulation. Mr. Clinton has steadfastly denied any wrongdoing. "The most important thing to me and the most important thing to the American people is I'm completely relaxed about this, because I didn't do anything wrong except I made a bad business deal," Mr. Clinton said Tuesday in an interview with CBS News.

Specifically, the Justice Department is looking into whether Mr. McDougal used Madison Guaranty to divert money into Whitewater improperly. There also have been allegations that in the mid-1980s Madison paid certain campaign and other debts of the Clintons, which is a questionable practice. The thrift has been declared insolvent, and federal taxpayers have had to pick up an estimated tab of \$50 million to protect depositors.

Some members of Congress have criticized the president for arranging to have the Justice Department issue a subpoena that would protect the Whitewater documents from public dissemination. The White House also has been slow in disclosing the whereabouts and disposition of the documents, some of which were quietly removed from the office of Deputy White House Counsel Vincent Foster after his suicide in July.

The White House staff was divided over how to handle the issue. Privately, Mr. Stephanopoulos and White House Chief of Staff Thomas McLarty argued for broad disclosure and the appointment of a special counsel in order to silence critics. But senior aide Bruce Lindsey, with the backing of Mrs. Clinton, maintained for a long time that the issue was private and that the Clintons hadn't done anything wrong. Disclosure would create more, not fewer, political headaches, they believed.

But with Democrats such as Senate Finance Committee Chairman Daniel Moynihan of New York joining in calls for a change of policy, the White House bowed to the inevitable. Adding to the pressure, congressional Democrat leaders told the White House this week that the Democrats simply had no convincing reply to Mr. Dole's public call for a special prosecutor.

Separately, the Federal Deposit Insurance Corp. is investigating whether Mrs. Clinton's former law firm misled the agency regarding the firm's dealings with Madison Guaranty, the Associated Press reported.

In 1989, the Rose Law Firm was paid \$400,000 by the FDIC to sue the auditors of Madison Guaranty. Rose had earlier represented Madison in an effort to win approval from Arkansas regulators for a recapitalization effort.

Federal conflict-of-interest regulations generally prohibit contractors from representing the government in thrift-failure cases where the same law or accounting firm represents or once represented the failed S&L. The FDIC probe, which is separate from the Justice Department's criminal inquiry, seeks to learn whether the Rose Law Firm was forthcoming about its ties to Madison, the AP reported.

*—Joe Davidson contributed to this article.*

# CLINTON ASKS RENO TO NAME A COUNSEL ON HIS LAND DEALS

## SWIFT CHANGE OF COURSE

President Bows to Pressure as  
He Tries to Avert Potential  
Inquiry by Congress

By GWEN IFILL

Special to The New York Times

WASHINGTON, Jan. 12 — Acting to ward off a potential Congressional inquiry and bowing to outside pressure, President Clinton asked Attorney General Janet Reno today to appoint a special counsel to investigate his involvement in a real estate development and its relationship to a failed Arkansas savings and loan.

The decision, relayed to White House aides by telephone as the President was traveling in the Czech Republic, was an outright reversal by Mr. Clinton and his wife, Hillary, in the matter. Until today, they had maintained that there was no need for a special investigation into their investment because they had done nothing wrong.

But Democrats in Congress began to join the calls for the appointment of a special counsel and urged Mr. Clinton to demonstrate that he had nothing to hide regarding the investment, which involved a plan to develop a retirement community in northern Arkansas. Aides said that Mr. Clinton spoke with Mrs. Clinton by telephone from Europe on Tuesday night and that she had "concurred" with the decision.

### Reno's Reluctance

Ms. Reno said tonight that she would reluctantly comply with the President's request. For weeks, Ms. Reno has argued that any counsel she appointed would not appear to be entirely independent and that she would prefer to wait until Congress revived a law that would allow her to ask a court to choose a counsel. A bill to put the law back on the books is now in Congress.

"However, it is equally clear that we must do everything we can to insure public confidence in the investigation, and to separate fact from speculation as rapidly as possible," she said tonight.

She said she would begin immediately to consider whom to appoint and how broad the counsel's mandate would be.

The Clintons were partners in the Whitewater Development Corporation with James E. McDougal, the proprietor of a failed Arkansas savings and loan institution. The Justice Department is investigating whether the institution's Madison Guaranty Savings and Loan Association improperly funneled money into Whitewater or into Mr. Clinton's 1984 re-election campaign when he was Governor of Arkansas.



**Talking points for Roger Altman: informational meeting with  
Mack McLarty 2/2/94**

- o RTC has been requested by eight Republican Senators and Congressmen, including Dole and Michel, to seek tolling agreements from President and Mrs. Clinton, the McDougals, David Hale, Jim Guy Tucker, Seth Ward and the Rose law firm, relating to Madison Guaranty.

- o Under the RTC Completion Act, the statute of limitations has been extended to five years. The extension is retroactive for claims involving fraud or intentional misconduct resulting in unjust enrichment or substantial loss to the institution.

- o The retroactive five-year extension relating to Madison Guaranty will expire on February 28, 1994.

- o The only claims that could still exist as a result of the five year retroactive extension are those relating to fraud or intentional misconduct. All other claims, including any based on negligence or gross negligence, have lapsed.

- o If any claim relating to fraud or intentional misconduct does exist, the RTC has three choices: (1) allow the claim to lapse on 2/28/94; (2) commence litigation to preserve it; or (3) enter into a tolling agreement with the relevant party to extend the statute of limitations, giving the RTC additional time to investigate and determine whether to commence litigation.

- o The RTC can enter into a tolling agreement only if the other party agrees.

- o There must be a basis to bring a lawsuit; frivolous claims will be dismissed and can subject the attorneys bringing the suit to sanctions by the court.

- o The RTC is currently reviewing the Madison Guaranty situation to determine if any claims exist under the Completion Act. (See 2/1/94 letter to Dole.)

- o If it is decided that any claim does exist, the RTC will have to determine which of the three alternatives to choose.

- o The work is being supervised by Ellen Kulka, the new General Counsel, and by Jack Ryan, the new interim Deputy C.E.O.

- o It is not certain when the analysis will be completed, but it will be before February 28.

- o I have decided that I will recuse myself from the decision making process, as interim C.E.O. of the RTC, because of my relationship with the President and Mrs. Clinton.

## M E M O R A N D U M

TO: The First Lady C O N F I D E N T I A L  
FROM: Harold Ickes  
DATE: 1 March 1994  
RE: Resolution Trust Corporation

-----

Attached is a copy of W. Neil Eggleston's 28 February 1994 memorandum to me regarding certain issues involving the RTC and the Rose Law Firm ("Rose"). Attached to that memo are copies of the FDIC report, dated 17 February 1994, concerning possible conflicts of interest regarding Rose's representation of the FDIC against Madison Guaranty, and the RTC's 8 February 1994 report concerning the same subject.

It is my understanding that shortly after Roger Altman met with Bernie Nussbaum, me and others concerning the RTC statute of limitations, he received an opinion from an ethics officer of the Treasury Department that he, as the acting head of RTC, did not have to recuse himself from matters involving Rose/Madison Guaranty. I will confirm this situation.

Please let me know if you want to discuss the attached.

THE WHITE HOUSE  
WASHINGTON

(revised)

February 28, 1994

MEMORANDUM FOR HAROLD ICKES  
DEPUTY CHIEF OF STAFF

FROM: W. NEIL EGGLESTON  
ASSOCIATE COUNSEL TO THE PRESIDENT

RE: WHITEWATER--FDIC AND RTC ROSE LAW FIRM ISSUES

The recent release of the FDIC and RTC reports addressing the possible conflict of interest of the Rose law firm in its representation of Madison Guaranty raises a number of issues.

What did the FDIC and RTC conclude, and why does it seem that their conclusions are inconsistent?

1. The FDIC Report.

The FDIC report was released on or about February 17, 1994. It was drafted by the Legal Division of the FDIC, and presented to FDIC Acting Chairman Hove, a Republican.

Frost & Co. was Madison Guaranty's accounting firm in 1984 and 1985. In that capacity, it prepared certain audited financial reports for Madison. The Rose firm used the 1985 audited financial statement in connection with its representation of Madison Guaranty before the Arkansas Securities Commission.

Madison Guaranty sued Frost & Co. in 1988 for the negligent preparation of financial statements. At the time, Madison was represented by the Gerrish firm. McDougal had been forced out of the management of Madison in the summer of 1986. When the FDIC took over Madison Guaranty in February 1989, it determined that the Gerrish firm had a conflict. In March 1989, the FDIC therefore replaced the Gerrish firm with the Rose law firm.

The FDIC report reviewed the time period in which the FDIC was responsible for the conservatorship of Madison Guaranty, from February 28, 1989 to August 9, 1989 (when the RTC was created and took over the conservatorship of failed savings and loans). The FDIC was thus the entity that retained the Rose law

firm to pursue the Frost & Co. litigation. The FDIC report reviewed relevant FDIC and RTC documents and interviewed participants, including FDIC and RTC employees and Rose law firm lawyers.

On the factual issue of whether the Rose law firm had disclosed to the FDIC its prior representation of Madison Guaranty, the FDIC concluded that the record was unclear. The report nevertheless concluded that no conflict existed between the Rose law firm's prior representation of Madison Guaranty and its representation of the FDIC in the Frost & Co. litigation. The report concluded that the firm's representation in 1985 was not "directly adverse" to the representation in 1989.

The FDIC based its conclusion on two grounds. First, it stated that there was no evidence that the firm had any involvement in the creation of the Frost & Co. audit report that became the subject of the 1989 litigation. Second, it stated "we have found no evidence that the Firm had a close relationship with the S&L which might call into question its independence." This was one of the sentences that Senator D'Amato attacked so bitterly at the Senate Banking Committee hearing.

On the issue of whether Mr. Hubbell had disclosed his relationship with his father-in-law, Seth Ward, who was then in litigation with Madison Guaranty, the FDIC stated that it was uncertain whether Mr. Hubbell had disclosed the relationship before the FDIC retained the Rose law firm. Nevertheless, the relationship was plainly known to the FDIC within three months of retention. Mr. Hubbell agreed to the creation of an internal firm "firewall" to guard against him receiving information that might be of use to his father-in-law. At the hearing, Senator Faircloth ridiculed what he called an "Arkansas firewall" through which he claimed light and heat could easily penetrate.

At the hearing, Chairman Hove testified that in 1989, FDIC standards required an actual conflict before the agency would bar a retention. Today, the FDIC's standards are much tougher and would bar a retention on the showing of an "appearance of a conflict of interest." Chairman Hove testified that under today's standards, the Rose law firm facts would present an appearance of a conflict.

Chairman Hove agreed to have the FDIC Inspector General ("IG") look into the conflict issue. It was somewhat unclear at the hearing whether the IG would look only at the process by which the FDIC arrived at its decision or would review the substantive issue. It was also unclear whether the IG would apply the actual conflict standard or the appearance of a conflict standard in its review. We should assume, however, that

the IG will adopt the broadest possible interpretation of its mandate.

## 2. The RTC Report.

The RTC report was released on February 25, 1994 by Senator D'Amato.

The RTC report differs in two major respects from the FDIC report. First, the RTC did not interview any Rose law firm attorneys. The RTC reviewed RTC records and interviewed RTC employees only. Second, the report is factual only. The report reached no conclusion on whether the Rose law firm had a conflict. As the report describes its scope, "This investigation focused only on whether or not Rose disclosed its previous representation of Madison to the FDIC and RTC."

The RTC concluded that Rose did not disclose either its prior representation of Madison Guaranty or Mr. Hubbell's relationship with Mr. Ward.<sup>1</sup> The report acknowledges, however, that within a few months of the retention, the supervisory FDIC attorney, Ms. Breslaw, was made aware of Mr. Hubbell's relationship with Mr. Ward. Ms. Breslaw determined that no conflict existed.

The RTC did not hire the Rose law firm; rather, the retention by the FDIC took place before the RTC was even in existence. Further, the RTC acknowledges in its report that it had no outside conflicts committee, nor regulations, guidance or policy on conflicts until after 1989.

The conclusion of the RTC report is that the matter was referred to the Office of the General Counsel (Ellen Kulka) for any action that it deems appropriate.<sup>2</sup>

---

<sup>1</sup> An ultimate finding that Rose had not disclosed either the prior representation of Madison Guaranty or the Ward relationship would be a finding that Mr. Hubbell was not truthful in his recollection. Mr. Hubbell told the FDIC when it was preparing its report that he advised FDIC attorneys about the prior Rose representation of Madison Guaranty and believes that he also advised the government attorneys about his relationship with Mr. Ward. Mr. Hubbell was not interviewed by the RTC attorneys during the preparation of their report.

<sup>2</sup> As noted above, the RTC report only addressed the factual issues of representation and disclosure. The report did not attempt to apply the facts to any applicable conflicts rules or regulations. It is not clear what the RTC General Counsel, Ms. Kulka, will do with the report. The RTC has an Outside Counsels' (continued...)

At the hearing, Mr. Altman agreed to refer the RTC report to the RTC IG for review.

**What sanction could be imposed if the FDIC/RTC finds that the Rose law firm had a conflict of interest or an appearance of a conflict in handling the Frost & Co. litigation in 1989 and failed to disclose that conflict?**

As noted above, it is not clear whether the FDIC or the RTC will review this matter under an actual conflict standard or an appearance of a conflict standard. It would seem that to impose any sanction, the IG would have to decide that the Rose firm violated a duty that was in existence at the time, not a duty that later became more strict.

The most severe sanction that would likely flow from a finding that the Rose law firm had a duty to disclose its prior representation of Madison Guaranty and its relationship with Mr. Ward and that it breached that duty would be that the Rose law firm would be permanently barred from any further work for the RTC or the FDIC (and possibly other banking regulators). Lesser sanctions imposed by the regulatory agencies might also be possible, such as a temporary bar.

Under the facts as we now understand them, it would seem quite unlikely that the RTC could bring a civil action against the Rose firm or any of its attorneys for failure to disclose the conflict. To prevail, the RTC would have to show fraud or intentional misconduct that caused substantial loss to the institution or unjust enrichment to the Rose firm. The RTC could only really show fraud or intentional misconduct if it could demonstrate that the Rose law firm "threw" the Frost & Co. litigation because of its prior representation of Madison Guaranty.

Criminal liability for the Rose firm would seem even more remote. To prevail, the Special Counsel would have to show that Rose acted with intent to defraud the savings and loan or wilfully made false statements to the FDIC/RTC through its failure to disclose the conflict.

**What civil matters is the RTC investigating, who can it sue, and why didn't we hear anything about a civil investigation until late 1993?**

---

<sup>2</sup>(...continued)

Conflicts Committee to which she could refer the report. She could presumably also refer the report with a recommendation to the RTC Acting CEO Jack Ryan for action.

The RTC is investigating whether it has a civil tort action against anyone who caused a loss to Madison Guaranty. This would include insiders such as James and Susan McDougal and members of the Board of Madison. It also includes professionals who provided service to Madison Guaranty, such as the Rose law firm, other law firms, and accounting firms. The Frost & Co. suit is an example of a suit against a professional service provider that caused loss to Madison Guaranty through a negligent audit. The RTC could also sue outsiders, including the President and Mrs. Clinton, if the RTC found that the outsiders worked with insiders illegally to divert assets of the savings and loan. For example, if the RTC believed that the Clinton campaign knowingly received diverted Madison assets at the April 1985 fundraiser or that the Clintons knowingly received other diverted Madison Guaranty assets through Whitewater, it could bring suit. The RTC commonly sues the recipient of a loan where it has information that the borrower knew that the loan was improper.

Under the legislation creating the RTC in 1989, the RTC as conservator of a failed savings and loan had to bring a tort claim within three years of the time the RTC (or FDIC as predecessor) took over the institution. The FDIC took over Madison Guaranty on February 28, 1989. Thus, all torts had to be brought by February 28, 1992. That day passed during the campaign.<sup>3</sup>

The Resolution Trust Corporation Completion Act, signed by the President on December 17, 1993, revived the possibility of a civil action. Under that legislation, a narrow class of torts--those that were fraudulent or involved intentional misconduct and that either caused substantial loss to the institution or unjust enrichment to the defendant--were revived. The statute extended the limitations period such that this category of tort could be brought within five years of the time the RTC took over the institution.<sup>4</sup> Moreover, the statute specifically provided that the five year period would apply even if the three year limitations period had already run.<sup>5</sup>

---

<sup>3</sup> I am unaware of any civil suits brought by the RTC prior to February 28, 1992, but I would not be surprised if it had sued McDougal and other insiders. McDougal was indicted in 1989 for bank fraud involving Madison Guaranty, and was acquitted in 1990. It would be fairly common for the RTC to pursue a civil action even after an acquittal.

<sup>4</sup> Torts based on negligence are still covered by the three year statute of limitations.

<sup>5</sup> The statute of limitations for crimes involving financial institutions is 10 years from the date the illegal conduct occurred, regardless of when the RTC took over the institution.

As a result, the RTC would not have been looking into a possible civil suit involving Madison Guaranty after February 1992 and before the passage of the statute last fall. In late 1993 and early 1994, Senator D'Amato and Rep. Leach recognized that the legislation had revived the possibility of an RTC lawsuit in the Madison matter. Both took to the floor of their respective chambers, aggressively urging the RTC to commence an action before the statute expired. In early 1994, the RTC--then faced with a statute of limitations that would run by the end of February--hired the San Francisco-based law firm of Pillsbury, Madison and Sutro to assist it in determining whether to bring any civil actions arising out of Madison.<sup>6</sup>

In February 1994, the statute of limitations was extended once again, through the life of the RTC, which is expected to expire on December 31, 1995.

Now that Mr. Altman as Acting CEO of the RTC has recused himself from further involvement in Madison Guaranty matters, who at the RTC will be the decision-maker on whether to bring a civil action arising out of the failure of Madison Guaranty?

Following his testimony before the Senate Banking Committee on Thursday, Mr. Altman recused himself as Acting CEO of the RTC from any further involvement in Madison Guaranty/Whitewater matters.

---

<sup>6</sup> The partner at Pillsbury assigned to this matter is Jay Stephens, a Republican who was a member of the Reagan and Bush administrations. From 1981 to April 1986, Mr. Stephens was a political appointee at the Justice Department. By 1986, he had become Associate Deputy Attorney General. From April 1986 through March 1988, he was Deputy Counsel to the President. In that capacity, he had a role in the Iran/Contra Affair. After published reports that Oliver North had shredded documents, Mr. Stephens called Fawn Hall. When she denied (falsely) that any improper shredding had taken place, Mr. Stephens accepted her denial, and the White House issued a statement denying the shredding.

In March 1988, President Reagan appointed Mr. Stephens to be U.S. Attorney for the District of Columbia. When President Clinton sought the removal of all U.S. Attorneys in April 1993, Mr. Stephens called a press conference at which he suggested that the President was acting to frustrate the investigation of Rep. Rostenkowski. At the time, Senator Dole called for hearings into what he termed the "March massacre." Until January 1994, Mr. Stephens had been considering running for the Senate.



The top official at the RTC who will be making these decisions on Madison Guaranty is Jack Ryan. Mr. Ryan was formerly with the Office of Thrift Supervision. He is a career official. His principal advisor will be Ellen Kulka, now General Counsel of the RTC, who also came from OTS. Ms. Kulka is also a career official.

We intend to nominate a person for the position of CEO of the RTC within the next few weeks. We can anticipate that any person the President nominates will be pressured to recuse from any Madison-related matters. If the person refuses to recuse and is confirmed, then that person will become the decision maker. If that person is forced to recuse to achieve confirmation, then Jack Ryan would remain the decision-maker on Madison matters at the RTC.

W.N.E.

**FDIC**Federal Deposit Insurance Corporation  
Washington DC 20429

General Counsel

February 17, 1994

MEMORANDUM TO: Chairman Hove

FROM: Douglas H. Jones *Douglas H. Jones*  
Acting General Counsel

SUBJECT: Report on the Retention of the Rose Law Firm

As you requested, we have reviewed the FDIC's 1989 retention of the Rose Law Firm with respect to Madison Guaranty Savings and Loan. Attached is a report on our review and findings. As you can see from the report, we found no basis to conclude that the retention involved a conflict of interest by the law firm. Accordingly, we are not recommending any sanctions against the firm.

Attachment

.000018

February 17, 1994

**LEGAL DIVISION REPORT ON THE RETENTION OF THE ROSE LAW FIRM  
FOR THE MADISON GUARANTY SAVINGS AND LOAN CONSERVATORSHIP**

The purpose of this report is to review the facts and circumstances surrounding the retention of the Rose Law Firm (the "Firm") for the representation of the conservatorship of Madison Guaranty Savings & Loan (the "Conservatorship" and the "S&L", respectively) in litigation against the Frost & Co. ("Frost") accounting firm. It explores (1) whether the Firm's prior representation of the S&L before the Arkansas Securities Commissioner constituted a conflict of interest; (2) whether the litigation against the Conservatorship by the father-in-law of the Firm partner in charge of the Frost litigation was a conflict of interest; and (3) whether any action against the Firm is warranted.

Assertions have been made that the Firm had conflicts of interest that should have prohibited it from representing the Conservatorship and the FDIC in the Frost litigation. We have reviewed the time period in which the FDIC was responsible for managing the Conservatorship (from February 28, 1989 through August 9, 1989, when the Resolution Trust Corporation was established) to determine the facts related to the Firm's retention. As a part of our review, we looked at all relevant internal FDIC and RTC materials from that time, reviewed relevant materials identified by the Firm, and interviewed each of the participants and others who were involved with the Conservatorship.

As detailed below, based on the information available to us, we have found no basis to conclude that under the then applicable rules either situation involved a conflict of interest. Accordingly, we recommend no sanctions against the Firm.

**Background**

On February 7, 1989, the FDIC entered into an agreement with the Federal Savings and Loan Insurance Corporation ("FSLIC") to act as agent for the FSLIC in any receivership or conservatorship appointed for an insured savings association after January 1, 1989. On February 28, 1989, FSLIC was appointed conservator for the Madison Guaranty Savings & Loan. Pursuant to the agreement with the FSLIC, the FDIC was appointed the managing agent for the Conservatorship. In that role, the FDIC was required to marshal the institution's assets and pursue all claims by and defend those against the S&L. Among the litigation existing at the S&L at that time was a suit against the institution's former auditor, Frost & Co. As managing agent, it was the FDIC's responsibility

000019

- 2 -

to determine whether that suit had any value and, if so, to continue the pursuit of the action. The FDIC's formal role ended on August 9, 1989, with the creation of the RTC, whose function was to serve as receiver or conservator for any S&L closed after January 1, 1989.<sup>1</sup>

#### The Firm's Prior Representation

In 1985, the Firm represented the S&L before the Arkansas Securities Commissioner on two matters: a plan to issue a \$3 million private placement of preferred stock in the S&L, on which the Commissioner was asked to issue an opinion; and an application by which the S&L, assuming it raised the capital, sought to set up a service corporation that would become a wholly-owned broker dealer of securities. The opinion was issued on May 14, 1985 and the Commissioner approved the service corporation on September 20, 1985, although placing a condition on the approval that the S&L must raise the capital by December 31, 1985. The capital was never raised and the plan was not implemented. There were no communications between the Commissioner's staff and the Firm after 1985 with respect to the securities placement or the plan.

Part of the submission in support of these two applications was an audit of the financial statements of the S&L performed by Frost for calendar year 1984. Certain adjustments to these financial statements were questioned by the Commissioner's office. The records of the Commissioner's office show that the effect of those adjustments was explained in letters from Frost and John Latham, the S&L's chief executive officer, attached to a letter from the Firm on July 25, 1985. There is no indication that the Firm retained the auditor, assisted in any way in the audit or took any position as to the quality of the audit.

In 1988, the S&L initiated litigation against Frost charging that the auditor had been negligent, reckless and breached its contract by failing to fairly represent the S&L's financial condition in the 1984 and 1985 audits. The S&L was represented in the litigation by the law firm of Gerrish and McCreary.

The Gerrish firm also was involved in defending directors and officers of failed banks in actions instituted by the FDIC. After FDIC was appointed managing agent of the Conservatorship, the FDIC staff attorney responsible for the Frost litigation concluded that, pursuant to FDIC policy, the firm had a conflict

---

<sup>1</sup>The FDIC's Legal Division continued to provide legal support to the RTC with staff dedicated to RTC legal matters until September 1991, when all RTC legal matters were assumed by a newly created Legal Division within the RTC comprised of the FDIC staff formerly dedicated to RTC work.

- 3 -

of interest with the FDIC and had to be replaced. The staff attorney also concluded that few firms in Arkansas had the experience and capacity to do accounting malpractice work, which is considered to be complex in nature. The staff attorney first considered the Arkansas law firm of Wright, Lindsey & Jennings, which had represented FDIC in other matters, but it too had a conflict of interest. The staff attorney then contacted the Rose firm based on previous work done by the Firm on behalf of the FDIC in connection with the Corning Bank failure.<sup>1</sup>

The staff attorney contacted a partner of the Firm (based on the staff attorney's recollection, probably Webster Hubbell) and asked the Firm to take over representation. The staff attorney is sure the Firm would have been asked about any conflicts of interest, but due to the passage of time has no specific recollection of making that request or any response that may have been made. Richard Donovan, a partner with the Firm who worked on the case, states that he recalls Mr. Hubbell having advised the staff attorney of prior representation of the S&L on a matter involving the Arkansas Securities Commissioner. Mr. Hubbell's recollection differs. He recalls advising the staff attorney very generally that the Firm had done a small amount of work for the S&L years earlier, but that he did not view that as amounting to a conflict. He believes the work he was aware of was lending and collection work. He says he does not believe he was aware of the earlier securities work at that time, so he does not believe he discussed it with the staff attorney then. The FDIC staff attorney has no recollection of the issue being raised and says that if it had been it would have been discussed with the attorney's supervisor. The supervisor has no recollection of the issue being raised.

---

<sup>1</sup> While the Firm had sent a letter to the FDIC dated February 28, 1989, soliciting work relating to any S&L failures, it does not appear the staff attorney was aware of that letter or that it influenced her decision to ask the Firm to represent the FDIC. Also, assertions have been made that the letter may have been deceptive and misled the FDIC regarding prior representation because it stated "the Firm does not represent any savings and loan association in state or federal regulatory matters." However, the letter also states "[f]rom time to time we have provided specialized service to some savings and loan associations in such areas as employment discrimination, work-out of participation loans and bankruptcy." The firm also acknowledged in the letter that there may be individual transactions or situations where a conflict of interest could arise.

- 4 -

The Existence of a Suit Involving Mr. Hubbell's Family

At the time the conservator was appointed (and when the Firm was retained), Mr. Hubbell's father-in-law, Seth Ward, Sr., was involved in litigation with the S&L. Mr. Hubbell's father-in-law had obtained a judgment of roughly \$470,000 for commissions allegedly owed him by the S&L for the sale of real estate on behalf of Madison Financial Corporation, a subsidiary of the S&L. That case was then on appeal.

Mr. Hubbell says he was aware of the Ward litigation but he did not view it as a conflict. He says he believes he did advise the staff attorney about it, but he cannot be certain. The staff attorney does not recall whether the Ward relationship was raised at the time of the Firm's retention in March of 1989. However, another FDIC staff attorney became aware of the relationship and informed the staff attorney on the case, in a letter dated June 8, 1989. At that time, the second staff attorney expressed concern that Mr. Hubbell would have access to information through his representation that could be damaging to the litigation involving Mr. Ward. After reviewing the facts, the staff attorney responsible for the Frost litigation concluded that the facts did not pose a conflict. On June 23, 1989, the staff attorney wrote to the FDIC's Managing Agent for the Conservatorship concerning the Hubbell/Ward relationship, stating that Mr. Hubbell had not represented Mr. Ward in the past and he would not do so in the future.<sup>3</sup> Mr. Hubbell then sent a letter to the FDIC Managing Agent, dated June 28, 1989, in which he affirmed that he had not and would not in the future represent Mr. Ward in the dispute with the S&L.<sup>4</sup> Mr. Hubbell also confirmed in an interview that he had not drafted any documents that were involved in the Ward litigation.

---

<sup>3</sup> The staff attorney's letter also noted that the primary attorney in the case was Richard Donovan, not Mr. Hubbell, and stated that Mr. Hubbell was involved only in an indirect way. Based on discussions with the staff attorney, this was meant to indicate that Mr. Donovan, as the junior partner on the case, would do most of the day-to-day work. Based on fee bills for the case, Mr. Hubbell performed a significant amount of work.

<sup>4</sup> The issue was raised again after Mr. Hubbell's letter when an FDIC credit specialist sent a memorandum to his supervisor expressing concern about the relationship and seeking senior level review of the situation. This memorandum also was called to the attention of the FDIC's Regional Counsel indicating that this should be "a Washington issue" because the staff attorney responsible for the Frost litigation was based in Washington, D.C. No further action appears to have resulted from these subsequent memoranda.

000011

- 5 -

As an added precaution, according to Mr. Hubbell, Mr. Donovan and Gary Speed, another partner at the Firm who worked on the Frost case, the Firm imposed an informal, unwritten procedure in connection with the Frost litigation that kept Mr. Hubbell from having access to information about his father-in-law. According to Messrs. Donovan and Hubbell, Mr. Hubbell was not allowed access to material such as an investigative report done by the S&L's prior attorneys, and he was kept out of several depositions when information concerning Mr. Ward's loans was expected to be involved. Mr. Speed states that Mr. Hubbell would leave the room if Mr. Ward's name came up during discussions, and that he and Mr. Donovan would not discuss Mr. Ward in the presence of Mr. Hubbell.

### Analysis

#### Criteria for Determining Whether a Conflict Exists

The standards governing the professional conduct of attorneys, including issues relating to actual and potential conflicts of interest, are set forth in codes or rules of professional responsibility and conduct adopted by the various states. Many states have adopted, or have patterned their rules on, the American Bar Association's Model Rules of Professional Conduct ("the Model Rules"). Arkansas adopted the Model Rules as its rules of conduct for attorneys in 1985. The Model Rules generally prohibit an attorney from representing a client where the attorney also represents or previously represented another client whose interests are adverse to the first client. The Model Rules provide that a client may waive a conflict of interest by consenting to the representation after consultation with the attorney and provided the attorney reasonably believes the representation will not adversely affect the relationship with the other client. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.7. Under the Model Rules, and all the state rules of which we are aware, it is the attorney, not the client, who has the primary responsibility to identify conflicts of interest when approached with a request to represent a client with respect to a new matter.<sup>5</sup>

---

<sup>5</sup> Notwithstanding that the responsibility to identify any potential conflicts rests principally with the attorney, in 1990 the FDIC Legal Division adopted comprehensive policies and procedures governing the retention of law firms and the waiver of actual or potential conflicts of interest. In 1989, the FDIC's conflicts procedures, however, were less formal. Prior to their retention, firms generally were required to respond to a series of questions regarding past and current representations. Unfortunately, in early 1989, due to the tremendous increase in workload as a result of the FDIC's added FSILC responsibilities,

- 6 -

The relevant provisions under the Arkansas rules of professional conduct provide that:

"A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless: (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and (2) each client consents after consultation"; and

"A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless: (1) the lawyer reasonably believes the representation will not be adversely affected; and (2) the client consents after consultation."

#### The Firm's Prior Representation

The information regarding whether the Firm disclosed that it had represented the S&L on the prior securities matter is unclear. The more important question, however, is whether a conflict of interest existed that should have been disclosed before the firm agreed to represent the conservator.

In essence, the Firm represented the S&L's interests before the Securities Commissioner in 1985 and it was representing the S&L's interests (on behalf of the S&L's conservator) in 1989. Previous representation of an institution by itself does not create a conflict when a subsequent conservator is appointed for the institution. There is no indication in the records, or based on our review, that the Firm did anything more with respect to the audit in question than take it at face value in its representation in 1985. There did not appear to be any divergence of interest between their representation in 1985 and 1989. As a consequence, the Firm's representation in 1985 was not "directly adverse" to its representation of the Conservatorship in 1989.

In addition, we have found no evidence that the Firm had a close relationship with the S&L which might call into question its independence. The Firm did not serve as general counsel or exclusive or frequent counsel for the S&L. In addition, no member of the Firm served in any senior managerial or directorial

such inquiries were not always documented. In this instance, there are no documents showing what inquiry was made of the Firm.

000024



- 7 -

relationship with the S&L prior to its failure.

Under the Model Rules, disclosure of prior representation such as involved here may not be required. However, where a firm is aware of such a prior relationship, we would expect it to convey that information to our staff to assist in determining whether to retain the firm. It is not clear whether the information was conveyed to the FDIC staff at the time. However, based on our review, we do not believe the prior representation represented a conflict of interest.

The Existence of a Suit Involving Mr. Hubbell's Family

It is uncertain whether the Hubbell/Ward relationship was disclosed at the time of retention. Nevertheless, it was clearly discussed within three months after retention and the staff attorney concluded there was no conflict. That assessment appears to be correct.

Mr. Hubbell had not represented Mr. Ward so there was no conflict of representation directly adverse to the Conservatorship. Also, Mr. Hubbell's representation of the FDIC did not appear to have any effect on Mr. Ward. Under Arkansas rules, unless Mr. Hubbell's representation of the Conservatorship would be "materially limited" by his "responsibilities to" his father-in-law or his own personal interests, no disclosure was required. Also, FDIC procedures, at that time, would not have required the disclosure of the relationship.

While concern was expressed by some FDIC staff shortly after the firm's retention that Mr. Hubbell would have access to information that could benefit his father-in-law, there is no indication any such information was transferred. Moreover, Arkansas rules of professional conduct (as do all state rules of conduct) prohibit an attorney from revealing information relating to representation of a client, unless the client consents after consultation. As a precaution, the firm apparently imposed its own informal "firewall" to prevent information regarding Mr. Ward from being passed on to Mr. Hubbell. Also, the FDIC's procedures at that time did not require disclosure of a relationship such as existed with respect to Mr. Hubbell and his father-in-law.

Therefore, no actual conflict appears to have existed. While in this case it is unclear whether advance disclosure was made and there was no requirement that Mr. Hubbell's relationship be disclosed, we want to emphasize that on an issue as subjective as this, we believe the better course would have been for the attorney to make clear and full disclosure in writing to the FDIC and let the FDIC as client determine whether in its judgment the representation at issue was likely to affect its interests.

000025

- 2 -

adversely.<sup>6</sup> Nevertheless, that was not specifically required at the time and, when disclosure was made, the FDIC determined the representation was not adverse.

#### Conclusion

In 1989, the Legal Division lacked formal procedures regarding the determination of conflicts of interest and, at the same time, the Division's staff was experiencing an enormous increase in workload due to the rapidly expanding duties of the FDIC. As a consequence, in hindsight documentation regarding the retention of the Firm is more limited than would be ideally hoped for. However, based on our review, we have found no basis to determine that either of the alleged instances involved a conflict of interest.

Therefore, we see no basis to recommend any sanctions against the Firm.

---

<sup>6</sup> In 1990, the FDIC adopted formal procedures to deal with conflicts which emphasized that waivers must be sought even where there is only the "appearance" of a conflict. Also, in 1990, the Supreme Court of Arkansas recognized that although the "appearance of impropriety" is no longer specifically a part of the state's rules of professional conduct the principle is still a part of the rules. First American Carriers, Inc. v. Kroger Co., 302 Ark. 86, 787 S.W.2d 669 (1990).



RESOLUTION TRUST CORPORATION

Resolving The Crisis  
Restoring The Confidence

---

OFFICE OF CONTRACTOR OVERSIGHT AND SURVEILLANCE

WASHINGTON FIELD OFFICE BRANCH

---

RTC/OCOS - T94002-WA

February 1, 1994

ROSE LAW FIRM  
OCOS FILE NUMBER: T94002-WA

Table of Contents

	Pa
I. Background . . . . .	
II. Rose Law Firm Representation of Madison Savings & Loan . . . . .	
III. Rose Law Firm Representation of FDIC/RTC . . . . .	
IV. Possible Conflicts . . . . .	
V. Disclosures by Rose Law Firm . . . . .	
VI. Summary . . . . .	
VII. Disposition of the Report . . . . .	
Attachments	

**ROSE LAW FIRM  
OCOS FILE NUMBER: T94002-WA**

**I. BACKGROUND:**

This investigation was initiated based on accounts in The Washington Times and The Washington Post concerning a possible conflict of interest involving the Rose Law Firm (Rose), Little Rock, Arkansas.

**Alleged Conflict:**

1. In 1984 and 1985, Rose represented Madison Guarant Savings and Loan Association (Madison) before the Arkansas Securities Commissioner. In its representation of Madison, the law firm presented and relied upon an audit report issued by Frost & Company (Frost) on Madison. The law firm represented Madison in its attempt to obtain authorization from the Commissioner to issue a class of preferred stock and to engage brokerage activities.

2. In 1989, after the failure of Madison, the Federal Deposit Insurance Corporation (FDIC) hired Rose to sue Frost for accounting malpractice in auditing the Madison books in 1984 and 1985. The Frost audit was the same one previously used by Rose in making a case for Madison before the Arkansas Securities Commissioner in 1985.

**Scope of the Investigation:** This investigation focused on whether or not Rose disclosed its previous representation of Madison to the FDIC and RTC. Interviews of current or former Rose Law Firm attorneys who may be knowledgeable of this matter were not conducted.

Charles F. Handley, Financial Examiner Supervisor, Arkansas Securities Department, provided documentation that established that Rose did represent Madison before the Department during 1984 and 1985:

1. Attachment 1 is a copy of a letter from the law firm, dated April 30, 1985, to Mr. Handley. The letter identified Hillary Rodham Clinton or Richard Massey as the firm's contact person for such information.

2. Attachment 2 is a copy of a handwritten memorandum dated May 6, 1985, addressed to "Brady." The unknown author of the memorandum instructed "Brady" to "please review and draft response to Hillary."

3. Attachment 3 is a copy of an office routing slip dated May 6, 1985, from "Charles" referring to an April 30, 1985, letter.

**Rose Law Firm**  
**Page 2**

letter from the firm setting forth Madison's plan to issue preferred stock and a legal opinion that Madison could issue such stock. The author expressed doubt that Madison could enter into such a business practice.

4. Attachment 4 is a letter, dated May 14, 1985, from Beverly Bassett, Savings and Loan Supervisor, to Ms. Clinton, relevant to the authorization and issuance of a class of preferred stock by Madison. Ms. Bassett's letter stated she agreed with Ms. Clinton's conclusion that Arkansas law expressed state chartered associations the power to authorize and issue preferred stock.

5. Attachment 5 is a letter, dated July 17, 1985, from Mr. Massey, Rose, to various officials of the Arkansas Securities Commission, relevant to Madison's application to engage in brokerage activities. Mr. Massey stated in his letter that either he or Ms. Clinton could be contacted if there were any questions.

6. Attachment 6 is a memorandum, dated July 17, 1985, from Mr. Handley to Ms. Bassett and Nancy Jones regarding Madison's application to form a second-tier, wholly-owned corporation, to engage in securities broker-dealer business. Mr. Handley expressed his concern about adjustments made to Madison's net worth by Madison's accountants in the December 1984 audited financial statement.

7. Attachment 7 is a letter, dated July 25, 1985, from Mr. Massey to various officials of the Arkansas Savings & Loan Association, relevant to Madison's application to engage in securities activities. The letter is dated July 17, 1985.

~~REPRESENTATION~~ ROSE has represented Madison prior to the failure of the savings and loan.

### **III. ROSE LAW FIRM REPRESENTATION OF THE FDIC/RTC:**

A. April A. Breslaw, Attorney, Professional Liability Section, RTC, Washington, D.C., provided information and counsel to the FDIC/RTC regarding the representation of Madison against Frost.

1. In 1988, Madison filed an accounting malpractice lawsuit against Frost. In 1989, Madison went into conservatorship. At that time, Ms. Breslaw, Attorney, FDIC Directors and Officers Liability Section, replaced Madison's counsel with Rose. The law firm was retained to continue pursuing the accountant malpractice suit against Frost (Attachments 8 and 9).

Rose Law Firm  
Page 3

2. Ms. Breslaw stated that the lawsuit filed by Rose on behalf of the FDIC (and subsequently the RTC) and Madison centered on the fact that Frost, during their 1984-1985 audit, failed to detect that Madison was insolvent (Attachment 10).

3. Ms. Breslaw stated that the case was settled in 1991 for \$1,025,000 (Attachment 10).

4. Ms. Breslaw provided several of the law firm's billings to FDIC/RTC for its representation in the matter of FDIC/RTC v. Frost & Company and Madison Guaranty Savings and Loan Association (Attachment 11).

5. Further, Ms. Breslaw obtained written confirmation from Rose that the firm billed the FDIC/RTC for a total of \$400,879.55 in the matter FDIC/RTC v. Frost & Company and Madison Guaranty Savings and Loan Association (Attachment 12).

6. In addition to Madison, Rose represented and continues to represent the RTC in legal matters involving institutions other than Madison (Attachment 13).

Summary: Rose represented the FDIC and the RTC. In one particular matter, the firm pursued a malpractice suit against Frost for negligence in determining the true financial status of the Madison during its audit of the institution.

#### IV. POSSIBLE CONFLICTS:

A. Frost Matters: Rose represented Madison before the Arkansas Securities Department. That representation involved S&L's attempts to obtain authorization to issue preferred stock. The firm utilized the S

authorities.

1. Later, Rose was retained by the FDIC (and subsequently the RTC) to pursue an accountant malpractice suit against Frost. The particular issue of the suit was the defective audit which failed to detect that Madison was insolvent.

#### B. Ward Matters:

1. In 1989, all files pertaining to the malpractice suit filed against Frost and Company were delivered to Rose, specifically Webb Hubbell, a staff attorney (Attachment 14).

2. Mr. Hubbell is the son-in-law of Seth V. Madison "insider", who obtained a judgement against Madison.

Rose Law Firm  
Page 4

approximately \$477,000 in 1989. Mr. Hubbell was present at the trial of the Seth Ward matter and appeared to have been an interested (indirectly) participant in the Ward proceedings (Attachment 15).

3. The judgement was appealed by the FDIC. Sue Strayhorn, FDIC Litigation Coordinator for Madison, advised that if a new trial was granted, information contained in the Frost audit files (of which Mr. Hubbell had knowledge) could be damaging to the FDIC case against Mr. Hubbell's father-in-law. Ms. Strayhorn brought this to the attention of Paul Jeddeloh, FDIC Staff Attorney, in order to make him aware of the situation (Attachment 15).

4. This possible conflict was also raised by Ken Schneck, Madison's Credit Specialist. In addition to the Seth Ward matter, Mr. Schneck also stated that Mr. Hubbell's brother-in-law, Seth Ward II, had also filed suit against Madison. Mr. Schneck stated that during the course of the Frost suit, practices and procedures used in Madison's day-to-day operations would surely be examined. As such, Mr. Hubbell would be privy to this detailed information. Mr. Schneck suggested that it would be naive to think none of this information would be released to Mr. Hubbell's family (Attachment 16).

5. Ms. Breslaw responded to the concerns of Mr. Jeddeloh, Mr. Strayhorn, and Mr. Schneck. On June 23, 1990, in a letter to the FDIC, Ms. Breslaw stated that Madison, she is not sure, was not willing to release any information about the Frost matter even though Rose (Attachment 17).

of the above two matters were disclosed by Rose. (See below for further disclosure discussion.) The matter involving Seth Ward was brought to the attention of the Staff Attorney, Madison, April Breslaw, by FDIC attorneys. Ms. Breslaw subsequently determined that no conflict existed. It should be noted that at this time, 1989, there was no Outside Conflict Committee and there were no regulations, policy, or guidance on conflict matters. The process, according to Ms. Breslaw, was informal and situations were handled as they came to the attention of the institution. (Attachment 18)

#### V. DISCLOSURES MADE BY THE ROSE LAW FIRM:

A. On October 3, 1990, Mr. Hubbell executed a Legal Services Agreement on behalf of Rose with the FDIC. Mr. Hubbell certified that, as part of its agreement with the FDIC, the firm would update any conflicts information in its annual report



**Rose Law Firm  
Page 3**

the FDIC. No disclosures were made by Rose at this time (Attachment 13).

B. On August 24, 1992, Mr. Hubbell, in a letter to the RTC provided detailed information on Rose. Mr. Hubbell stated that the firm's prior representation of the FDIC/RTC included Madison Guaranty Savings & Loan. No disclosure was made that the firm represented Madison prior to FDIC/RTC involvement.

1. In his letter, Mr. Hubbell disclosed an unrelated conflict involving a former member's alleged conflict of interest in acting as both borrower and attorney in connection with his personal credit arrangements at FirstSouth. The claim was subsequently settled and the member withdrew from the firm in March 1988.

2. Attached to Mr. Hubbell's letter was an RTC Fit and Integrity Certification which fully disclosed details of conflict involving the former member of the firm (Attachment 14).

C. On December 1, 1992, Mr. Hubbell executed a Legal Services Agreement with the RTC and stated the firm had no conflicts of interest with the RTC or FDIC (Attachment 15).

D. Ms. Breslaw, formerly FDIC and currently with the RTC, advised that she has no recollection that the Rose Law Firm verbally disclosed to her its prior representation of Madison. Ms. Breslaw further stated she had no documentation regarding conversation wherein Mr. Hubbell told her about the firm's representation of Madison (Attachment 21).

~~Summary:~~ Rose was unrelated to the Frost or Ward matters. No documentation was found regarding a disclosure of either the Frost or the Ward matters.

**VI. SUMMARY:**

A. Rose represented Madison prior to its failure. In particular matter, the firm represented Madison before the Arkansas Securities Department in the S&L's attempt to obtain a license to engage in brokerage activities. The firm's representation relied upon the fact that...

B. Rose represented the FDIC/RTC subsequent to the failure of Madison. In one particular matter, the firm was retained to pursue an accountant malpractice suit against Frost for failure to detect the insolvency of Madison.

C. Rose did not disclose its representation of Madison before the Arkansas Securities Department to the FDIC/RTC.

Rose Law Firm  
Page 6 -

Further, it did not report possible conflicts involving the brother-in-law and father-in-law of Webb Hubbell, staff attorney at Rose. Both Seth Ward and Seth Ward, II, had filed suits against Madison. The FDIC became aware of this matter, but Ms. Breslaw, the FDIC attorney assigned to the Madison matters, determined that a conflict did not exist.

D. Ms. Breslaw, who was subsequently assigned to the RTC, did retain Rose in 1989 to represent the FDIC/RTC at Madison. Ms. Breslaw did not recall anyone at the firm telling her that the firm had previously represented Madison. No documentation was found which reflected that the firm had disclosed the representation.

E. A F&I Certification and Legal Service Agreements were reviewed and disclosed and firm did not disclose the Frost and Ward matters.

#### VII. DISPOSITION OF THIS REPORT:

A. This report is provided to the Office of the General Counsel for any action which seems appropriate.

B. This investigation was coordinated with the FDIC who conducted a separate, independent investigation of these matters. The FDIC investigating attorney is John Downing.

Attachments

## ATTACHMENTS

1. Letter, dated April 30, 1985, from Rose to the Arkansas Securities Department.
2. Handwritten note, dated May 6, 1985, regarding Rose.
3. Handwritten note, dated May 6, 1985, regarding a letter from Rose concerning the Madison plan.
4. Letter, dated May 14, 1985, regarding issuance of preferred stock by Madison.
5. Letter, dated July 10, 1985, regarding Madison's application to engage in brokerage activities.
6. Memorandum, dated July 17, 1985, regarding the application submitted by Madison.
- ~~7. Letter, dated July 25, 1985, regarding the Madison application.~~
8. Correspondence relative to the transfer of the Frost matter Rose.
9. Electronic mail, dated January 10, 1994, regarding filing submitted by Rose.
10. Electronic mail, dated January 11, 1994, regarding the law firm's involvement in Madison.
11. Assorted invoices from Rose regarding the Frost matter.
12. Listing of matters handled by Rose for the FDIC/RTC.
13. Letter to Rose regarding the Frost lawsuit files.
14. Letter regarding conflict concerns to Breslaw.
15. Letter regarding conflict concerns to O'Donnell.
16. Letter regarding conflict concerns to Breslaw.
17. Letter from Rose regarding RTC Legal Services Agreement.
18. Legal Services Agreement between Rose and the RTC.
19. Legal Services Agreement between Rose and the FDI
20. Electronic Mail, dated January 10, 1994, from Breslaw to multiple parties regarding this investigation.

IR- 9-94, WED 6:28

P. 01



THE DEPUTY SECRETARY OF THE TREASURY  
WASHINGTON

*mainly known*

*Rosen - Vintage*  
*Altman - you are truly*  
 DEAR MR. PRESIDENT, *one of our country's finest* *Ulf*  
 I WANTED TO EXPLAIN MY DECISION ON THE *RFC*  
 RECUSAL AND TO ASSURE YOU THAT I TRIED TO ACT WITH THE  
 ADMINISTRATION'S BEST INTERESTS IN MIND.

THE DECISION TO HAVE THAT MEETING WITH YOUR STAFF  
 WAS DUMB. I TAKE FULL RESPONSIBILITY FOR IT. MY INTENTION  
 WAS O.K. - EXPLAIN THE PROCEDURES THE *RFC* WOULD BE  
 FOLLOWING (NO DISCUSSION OF THE SUBSTANCE OF THE CASE)  
 - BUT THE APPEARANCES ESCAPED ME AND NEVER SHOULD  
 HAVE.

RELATIVE TO RECUSAL, IT HAS BEEN UNDER CONSIDERATION  
 FOR SEVERAL WEEKS. SECRETARLY BENJAMIN, TREASURY GENERAL  
 COUNSEL AND THE *RFC* COUNSEL HAD URGED IT IN THE STRONGEST  
 TERMS.

NEVERTHELESS, I HAD THOUGHT IT SUPERFLUOUS AND  
 HAD DECLINED TO TAKE THAT STEP. MY APPOINTMENT WAS  
 SCHEDULED TO EXPIRE ON MARCH 30. AND, MY INSTRUCTIONS  
 TO *RFC* STAFF HAD BEEN TO HANDLE THIS MATTER IN  
 IDENTICAL FASHION TO ANY OTHER CASE. THIS WAS TO ENSURE  
 AN IMPARTIAL PROCESS.

BUT, AFTER MY TESTIMONY ON THURSDAY, IT BECAME  
 CLEAR THAT APPEARANCES OF A CONFLICT WERE TAKING HOLD  
 I WAS ADVISED THAT THE ADMINISTRATION COULD BE HAMMERED  
 OVER THIS FOR SOME TIME.

I CONCLUDED, THEN, THAT SUCH ONGOING  
 CRITICISM WOULD BE MORE HARMFUL THAN ANY BENEFITS



DEPARTMENT OF THE TREASURY  
WASHINGTON

- 2 -

ASSOCIATED WITH MY REMAINING UNRECOVERED FOR FOUR  
MORE WEEKS.

HAVING PERSISTED THE INITIAL ADVICE, THIS WAS  
A HARD DECISION TO MAKE. I HOPE YOU UNDERSTAND MY  
MOTIVATIONS. I APOLOGIZE FOR THE EMBARRASSMENT THIS  
HAS CAUSED.

SINCERELY,

Rga

## THE WHITE HOUSE

WASHINGTON

July 27, 1994

The Honorable Henry B. Gonzales  
Chairman  
U.S. House of Representatives  
Committee on Banking, Finance and Urban Affairs  
One Hundred Third Congress  
2129 Rayburn House Office Building  
Washington, D.C. 20515-6050

Dear Chairman Gonzales:

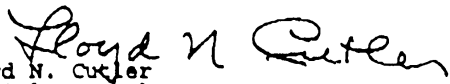
Yesterday I was asked a series of questions relating to a meeting between the President and Governor Jim Guy Tucker on October 6, 1993. I have made inquiries about that meeting and would like to report to the Committee what I learned.

The meeting took place at the request of Governor Tucker who was in Washington to meet with the Arkansas congressional delegation. It began at 3:45 p.m. and lasted about 40 minutes. I am attaching a Memorandum prepared for the President in advance of this meeting, which shows that the purpose of the meeting was for the President to accept a copy of Governor Tucker's proposal for locating a Defense finance and accounting servicing facility in Arkansas. (Governor Tucker's proposal was declined by the Department of Defense.)

Mr. Keith Mason, Deputy Assistant to the President for Intergovernmental Affairs, was present for the entire meeting. He has confirmed that the subjects of Whitewater, RTC criminal referrals or Madison Guaranty were never discussed. I have reviewed Mr. Mason's detailed notes of this meeting and find no mention of anything even remotely related to the RTC investigation. According to Mr. Mason's recollection of the meeting and his notes, in addition to the Defense facility, Governor Tucker also raised issues related to Medicaid funding, an FDA research facility, interstate highway financing, National Guard cutbacks, and NAFTA.

I trust this further elaboration will put any questions about this meeting to rest.

Sincerely yours,

  
Lloyd N. Cutler  
Special Counsel to the President

## THE WHITE HOUSE

WASHINGTON

October 5, 1993

## MEETING WITH GOVERNOR TUCKER

DATE: October 6, 1993  
 TIME: 3:45 pm  
 LOCATION: Oval Office  
 FROM: Marcia L. Hale  
 Dawn M. Friedkin

## I. PURPOSE

You will meet with Governor Tucker to accept a copy of a proposal for locating one of the planned Defense finance and accounting servicing facilities in Arkansas.

## II. BACKGROUND

Governor Tucker is in town for a meeting with the Arkansas delegation. He requested a meeting with you to deliver a copy of a proposal for locating one of the planned Defense finance and accounting servicing facilities in Arkansas at Camp Robinson. The Governor sent the original report to Secretary Aspin on October 4.

Drake Keith and Cecil Alexander are accompanying the Governor to Washington and the White House. They do not expect to join you and the Governor in the Oval Office. However, you may want to invite them in at the end of the meeting for a photo.

You should be aware that the Governor will be unable to join you on your conference call with governors on Thursday morning, because he will be enroute back to Arkansas. You may want to use this opportunity to discuss the governors roles in the NAFTA effort.

## III. PARTICIPANTS

The President  
 Governor Tucker  
 Marcia L. Hale  
 Drake Keith (to join for photo only)  
 Cecil Alexander (to join for photo only)

## IV. PRESS PLAN

White House photo only.

## V. SEQUENCE OF EVENTS

The President will greet Governor Tucker and accept the proposal in the Oval Office. At the end of the meeting The President will invite Drake Keith and Cecil Alexander in for a photo..

## VI. REMARKS

None required.





DEPARTMENT OF THE TREASURY  
WASHINGTON

**REPORT TO  
THE SECRETARY OF THE TREASURY  
  
FROM  
THE OFFICE OF GOVERNMENT  
ETHICS  
JULY 31, 1994**



United States

**Office of Government Ethics**

1201 New York Avenue, NW., Suite 500

Washington, DC 20005-3917

July 30, 1994

The Honorable Lloyd Bentsen  
Secretary of the Treasury  
Washington, DC 20220

Dear Mr. Secretary:

By letter dated March 3, 1994, you requested that I provide you with my views on whether any ethics or conflicts questions were raised by certain meetings or other contacts between employees of the Department of the Treasury and White House officials concerning the Resolution Trust Corporation's (RTC) resolution of the Madison Guaranty Savings and Loan Association (Madison).

The Office of Government Ethics (OGE) is not an investigative agency. For this reason, and because Treasury's Designated Agency Ethics Official provided ethics advice in advance of one meeting and is the Deputy of one of the participants in several of the contacts at issue, I offered to provide the advice and assistance of my Office to the Inspectors General of Treasury and the RTC in connection with an administrative investigation of the matter to be conducted by them. I agreed to review the report issued by these offices to provide you with whatever advice I believed would be appropriate under the circumstances. It is of course, your responsibility to make any necessary determinations.

The Office of Government Ethics does not ordinarily participate in an agency's investigation of the conduct of its own employees or make recommendations as to appropriate disciplinary or remedial action. Treasury, as the employing agency, is primarily responsible for determining whether the conduct of its employees violates the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. part 2635. There are, however, formal procedures under which OGE may become involved in recommending corrective or disciplinary action based upon a violation of the noncriminal portions of the standards of conduct. Those procedures may be triggered if OGE has reason to believe that the standards of conduct have been violated and then determines that the agency has not investigated the activities, has inadequately investigated the activities, has improperly interpreted or applied an ethics provision, or has taken or recommended inappropriate corrective or disciplinary action. An employee whose conduct is under review by OGE pursuant to these procedures is entitled to a hearing conducted on the record. These procedures are set forth in 5 C.F.R. part 2638, Subpart E.

These procedures have not been triggered. With regard to any question about an investigation, the Department of the Treasury, in

The Honorable Lloyd Bentsen  
Page 2

conjunction with the RTC, has completed an investigation. We received their final report at noon yesterday. Considering the severe constraints placed upon those offices to complete this investigation in time for your use in preparing Congressional testimony, we believe they have done an admirable job. While some details may not have been as fully developed as they or we might have wished, we do not anticipate that any further details would have a significant effect on our analysis. Further, since you have not yet acted with regard to the report, we have no basis to believe you have improperly interpreted or applied an ethics provision or taken or recommended inappropriate corrective or disciplinary action. Our only purpose in this letter is to provide an analysis of the standards we believe are applicable for your consideration in whatever decisions you make.

Because your authority as Secretary of the Treasury relates to employees of the Department, the report of the Inspectors General is necessarily focused upon the activities of officials of the Treasury Department. For that reason, our analysis is not intended to cover, nor should it in any way reflect upon, the actions of individuals who are employed by the White House. Further, because the sanctions for violating the executive branch standards of conduct are administrative in nature and, therefore, applicable only to current employees, we have not provided an exhaustive analysis of the conduct of any individual who is no longer employed by the Department.

#### INTRODUCTION

In view of the considerable attention and commentary this matter has received, it is appropriate before setting forth our analysis to emphasize that all conduct that some may perceive as "unethical" does not necessarily violate the standards of conduct. The standards at 5 C.F.R. part 2635 are regulatory provisions based upon the "Principles of Ethical Conduct" enumerated in Executive Order 12674. Their focus is on ensuring that employees do not use their public offices for nonpublic purposes. The standards are, in effect, a written code, with provisions sufficiently specific in their application to certain types of conduct that an employee can be held accountable, by administrative disciplinary action, for their violation. The standards of conduct are not a yardstick by which all Governmental action can be measured.

"Ethics," in its true sense, is a far more expansive concept. For instance, whether the United States should send food to famine victims abroad is a policy decision with a clear "ethical" dimension. Without some personal financial or other interest in the undertaking, however, the actions of those who make or carry out that determination would not violate the standards of conduct, even though many might characterize a decision to withhold aid as "unethical."

The Honorable Lloyd Bentsen  
Page 3

The standards set forth a code of conduct to which employees of the executive branch must, at a minimum, adhere. Every violation of a statute, regulation or policy does not amount to a violation of the standards of conduct; most such actions are simply violations of the applicable statute, regulation or policy. Moreover, the standards of conduct do not hold individual employees accountable for Governmental systems that fail or for errors of judgment. That is not to say that individual employees are not otherwise accountable for Governmental systems for which they are responsible or for the judgment they exercise. There may be substantial management and program reasons for reviewing an employee's performance in a particular role. That management responsibility is separate and apart from the responsibility that an agency also has to measure the employee's conduct against the standards of conduct.

#### ANALYSIS

This Office has reviewed the report of the Inspectors General dated July 29, 1994, including the transcripts of the interviews conducted and the documents provided as exhibits. We received copies of the transcripts as they were produced but we relied upon review by the Inspectors General of documentation other than that provided as exhibits.

On the basis of our review, we believe that you might reasonably conclude that the conduct detailed in the report of officials presently employed by the Department of the Treasury did not violate the Standards of Ethical Conduct for Employees of the Executive Branch. However, many of the contacts detailed in the report are troubling. In the course of our review, it appeared that there were some misconceptions on the part of Treasury employees that may have contributed to the fact that those contacts occurred. Treasury employees who performed both Treasury and RTC functions seem to have failed to appreciate which roles they were performing and, thus, which agency's policies and regulations applied. In addition, based on our reading of the testimony, there appears also to have been a misperception that the standard at 5 C.F.R. § 2635.703 regarding the use of nonpublic information was the only provision that need be taken into account in deciding whether information should be conveyed. And, finally, there appears to have been a misunderstanding of the function of recusal.

#### PERTINENT PROVISIONS OF THE STANDARDS OF ETHICAL CONDUCT

During the period when Independent Counsel Robert Fiske was conducting his investigation and the Inspectors General were waiting to begin their administrative investigation, this Office reviewed the standards of conduct to determine which standards, if any, might apply to the conduct of Treasury officials. With press accounts as our only basis for what conduct might be involved, we

The Honorable Lloyd Bentsen  
Page 4

determined that a "worst-case scenario" might implicate the following provisions in 5 C.F.R. part 2635:

§ 2635.101(b)(6), the principle that an employee shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government;

§ 2635.101(b)(8), the principle that an employee shall act impartially and not give preferential treatment to any private organization or individual;

§ 2635.101(b)(14), the principle that an employee shall endeavor to avoid any actions creating the appearance that he is violating the law or ethical standards set forth in this part;

§ 2635.702, the standard that an employee shall not use public office for the private gain of friends, relatives or persons with whom the employee is affiliated in a nongovernmental capacity;

§ 2635.702(a), the standard that an employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that is intended to coerce or induce another person, including a subordinate, to provide any benefit to himself or to friends, relatives or persons with whom the employee is affiliated in a nongovernmental capacity;

§ 2635.703, the standard that an employee shall not engage in a financial transaction using nonpublic information, nor allow the improper use of nonpublic information to further his own private interest or that of another, whether through advice or recommendation, or by knowing unauthorized disclosure;

§ 2635.704, the standard that an employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes;

§ 2635.705(a), the standard that, unless authorized in accordance with law or regulations to use such time for other purposes, an employee shall use official time in an honest effort to perform official duties.

§ 2635.705(b), the standard that an employee shall not encourage, direct, coerce or request a subordinate to use official time to perform activities other than those required in the performance of official duties or authorized in accordance with law or regulation.

The Honorable Lloyd Bentsen  
Page 5

We provided the Inspectors General with references to these provisions and discussed possible lines of inquiry to assist them in establishing the boundaries of their investigation and framing their interview questions. We did so with the caveat that their factual findings might narrow or expand the list.

After reviewing the report, we saw nothing to indicate that any provisions other than those noted above were in issue. We saw no indication whatsoever that any Treasury employee knowingly made an unauthorized commitment or promise of any kind purporting to bind the Government. 5 C.F.R. § 2635.101(b)(6). We also saw nothing that would require an analysis of whether any Treasury employee had used his or her own official time or that of a subordinate for other than official duties. 5 C.F.R. § 2635.705. In addition, the provisions of 5 C.F.R. § 2635.704 regarding misuse of Government property did not appear to be in issue. That section's inclusion of "Government records" within the definition of "Government property" was intended to ensure compliance with various specific legal proscriptions regarding the Government's ownership of its records, such as the Records Disposal Act. Those proscriptions were not implicated by the handling of any record at issue in this case.

The Standard that proved to be most, though not exclusively, pertinent to our analysis was 5 C.F.R. § 2635.703, which provides in part:

(a) Prohibition. An employee shall not . . . allow the improper use of nonpublic information to further his own private interest or that of another, whether through advice or recommendation, or knowing unauthorized disclosure.

The concept of what constitutes nonpublic information is important in applying this standard and the regulation, itself, provides the following definition:

(b) Definition of nonpublic information. For purposes of this section, nonpublic information is information that the employee gains by reason of Federal employment and that he knows or reasonably should know has not been made available to the general public. It includes information that he knows or reasonably should know:

- (1) Is routinely exempt from disclosure under 5 U.S.C. 552 or otherwise protected from disclosure by statute, Executive order or regulation;
- (2) Is designated as confidential by an agency; or

The Honorable Lloyd Bentsen  
Page 6

(3) Has not actually been disseminated to the general public and is not authorized to be made available to the public on request.

It is our understanding that documents containing information about referrals to the Department of Justice are generally exempt from public disclosure by virtue of exemption (b) (7) of the Freedom of Information Act (FOIA), 5 U.S.C. § 552. In addition, information about RTC-generated criminal referrals, including the fact that a referral has been made, appears to have been designated as confidential by the RTC. As set forth in the memorandum of June 17, 1993 provided as Exhibit 3, RTC's policy with respect to criminal referrals is one of strict confidentiality. Unless directed by counsel, disclosure of any investigative matter is prohibited without authorization by the head of the Office of Investigations.

As a general proposition, the fact that information has been leaked would not cause an agency to consider the information to have lost its "nonpublic" character. This is well-established under the FOIA. A number of FOIA cases have dealt with the question of whether the unauthorized disclosure of information would prevent an agency from claiming that the information is nonetheless exempt under the FOIA. It is clear from the decisions in these cases that a waiver of the FOIA exemptions has not occurred because of an unauthorized disclosure. See, e.g., Simmons v. Department of Justice, 796 F.2d 709 (4th Cir. 1986); Medina-Hincapie v. Department of State, 700 F.2d 737 (D.C. Cir. 1983). Note also that in Resolution Trust Corporation v. Dean, 813 F. Supp. 1426 (D. Ariz. 1993), a non-FOIA civil discovery decision, the court found no waiver of the attorney client privilege where an RTC "Authority to Sue Memorandum" was leaked.

This proposition regarding the "nonpublic" nature of information that has been leaked would hold true as well under § 2635.703 of the standards of conduct. Leaked information could be "nonpublic" within the meaning of § 2635.703(b) in that it could be exempt under the FOIA; could retain an agency designation of confidentiality; or would not have been "authorized to be made available to the public on request."

The RTC's policies and procedures regarding disclosure of information about criminal matters referred to the Department of Justice, as set forth in the June 17, 1993 memorandum and other RTC documents, provide for information about such referrals to be shared within the Government only among a few specified entities. The White House is not among the entities specified. Exceptions to the RTC's disclosure policy must be authorized as noted above.

The RTC's disclosure policy may have been violated in this case if information regarding a criminal referral was discussed

The Honorable Lloyd Bentsen  
Page 7

outside the parameters of that policy, i.e., without the necessary authorization. For example, Ms. Hanson stated with respect to the September 29 disclosure that she had been directed by Mr. Altman to provide information about a referral to Mr. Nussbaum. Mr. Altman does not recall having given that authorization. In view of the discrepancy between Ms. Hanson's and Mr. Altman's recollections, however, we cannot say for certain whether authorization from the head of the agency was obtained in that instance. Even had such authorization been obtained, we cannot say that such authorization would comport with the RTC's disclosure policy.

In any event, such a finding would resolve only one element of § 2635.703. In order for a violation of § 2635.703 to occur, not only must a disclosure of nonpublic information be "unauthorized," the disclosure also must be "to further [the employee's] own private interest or that of another." That element of § 2635.703 is discussed below, in the analysis of the standards of conduct as applied to the contacts listed in the report.

#### CONTACTS

Our analysis of the applicable standards of conduct is set forth below in the chronological order in which the contacts occurred. In some instances the actual dates of the contacts are uncertain although the contacts are placed in the chronological order most supported by the participants' recollections.

#### 9/29 Meeting between Hanson, Nussbaum and Sloan

Ms. Hanson recalls that during the meeting that occurred on September 29, 1993, she informed Messrs. Nussbaum and Sloan that the RTC was about to make a criminal referral relating to Madison and that the Clintons were not objects of the investigations, but were mentioned as possible witnesses. According to Messrs. Nussbaum and Sloan, she related some additional details concerning the referral.

The September 29 meeting requires analysis under § 2635.703 and under the appearance principle at § 2635.101(b)(14) as applied to that standard. If § 2635.703 was not violated, the impartiality principle at § 2635.101(b)(8) could, nevertheless, be implicated. We saw nothing in the record to suggest that Ms. Hanson has a personal friendship or nongovernmental affiliation with the President or Mrs. Clinton or with any other person who would might be affected by the referral. Thus, neither § 2635.702 nor § 2635.702(a) would appear to be in issue.

For a disclosure to violate § 2635.703, the information conveyed must be nonpublic and the disclosure by the employee must have been a "knowing, unauthorized disclosure" made "to further [the employee's] own private interest or that of another." While



The Honorable Lloyd Bentsen  
Page 8

the term "nonpublic" used in § 2735.703 may tend to suggest that this provision is intended to apply to disclosures made to those outside the Government, the section does in fact apply to disclosures to other Federal employees when made for the purpose of allowing the improper use of nonpublic information to further the private interests of another. The term "another" has its ordinary, broad meaning and is not limited by any definition to those other than Federal employees.

We believe the information conveyed in the course of the meeting was nonpublic information within the meaning of § 2635.703(b). Ms. Hanson has indicated that her purpose in disclosing the information about the pending referrals was to enable the White House to prepare to respond to press inquiries because the information was apt to be leaked. According to Mr. Nussbaum, the purpose she indicated to him was to assist the White House in preparing to respond to press inquiries likely to result from leaks to the press.

The question of whether Ms. Hanson's disclosure served an official interest raises a unique issue about the nature of the Office of the President. Matters that would be of only personal significance for other executive branch officials may take on official significance when the President of the United States is involved. White House staff has long been used in addressing press inquiries regarding essentially personal matters involving the President and First Lady. Since appropriated funds have been spent for these purposes from administration to administration without any legal objection of which we are aware, we are not in a position to question the validity of the assumption apparently made by those who participated in the contacts detailed in the IG report that dealing with press inquiries regarding the President's and First Lady's personal lives, including any involvement they may have had with Madison, is a proper White House function. Since there is no information in the report suggesting that Ms. Hanson had any purpose other than assisting the White House to perform its press function, we believe there is a reasonable basis to conclude that Ms. Hanson's disclosures were not made to further a private interest. Whether it is an appropriate activity for Treasury employees to assist the White House press office in carrying out its functions in fielding questions about the personal interests of the First Family would seem to be a management issue.

We also considered the possibility that Ms. Hanson's disclosure may have violated the appearance standard, which is set forth at § 2635.101(b)(14) as follows:

Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the

The Honorable Lloyd Bentsen  
Page 9

law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

As applied to the nonpublic information provisions of § 2635.703, the appropriate inquiry under the appearance standard is whether a reasonable person with knowledge of the relevant facts would have reason to believe that Ms. Hanson disclosed the information regarding the referral for the purpose of furthering the private interests of the President or others, as opposed to another purpose including the public interests of the Office of the President. Information about investigations and referrals is protected, in part, to ensure that the subjects of those investigations or referrals and others who are interested do not interfere with and are not needlessly embarrassed by the investigative process. The facts surrounding Madison are so complex that we are unwilling to speculate what private advantage, if any, might be gained by knowing about the referral. We will assume, however, that there was a private advantage that could have been gained by the President through knowledge of the referral. When we are discussing the President's private interest, it should be assumed that the President's private interests include the interests of the First Lady.

We believe that you could conclude that the appearance principle was not violated by Ms. Hanson's disclosure. We recognize that some may harbor a "suspicion" that the information was provided to be used for the private advantage of the President. The appearance principle, however, does not hold an employee accountable through disciplinary action based upon a standard of suspicion. Appearances are to be judged from the perspective of a reasonable person with knowledge of the relevant facts. In the preamble that accompanied publication of the standards as a final rule we stated that we view the reasonable person test as providing "appropriate assurance to an employee that his or her conduct will not be judged from the perspective of the unreasonable, uninformed or overly zealous." 57 Fed. Reg. 35,008 (1992).

The report does not contain any facts that would suggest that Ms. Hanson had reason to believe that the information she provided would be improperly used to further the private interests of the President or any other individual. There is nothing in the report, for example, that would indicate that she had any reason to believe the information would be given to the President's private counsel or to others who may have been mentioned in the referral. In the absence of any such indication in the report, we believe it is appropriate for you to consider facts which would give a reasonable person reason to believe that her purpose was, as she has stated, to enable the White House to perform its press function. Among facts that we view as relevant are Mr. Roelle's statement that he thought it was his responsibility to carry out the policy within

The Honorable Lloyd Bentsen  
Page 10

the RTC to advise the CEO of high profile cases precisely because leaks are a problem at the RTC. That policy would seem to be warranted based on the RTC's receipt of press inquiries indicative of leaks only a week after the disclosure to the White House took place.

The report understandably does not cover executive branch practice with respect to agencies advising the White House on matters about which it is likely to receive press inquiries. That, however, is a fact that you should consider relevant to the appearance analysis. This Office, for example, routinely deals with the White House on matters relating to the process of confirming Presidential nominees and, as a matter of course, keeps White House staff apprised of confirmation-related matters, such as potential financial conflicts of interest, that are likely to be of interest to the press. As Secretary of the Treasury, you are in a better position than we to know the various departmental practices on advising the White House regarding matters involving the President likely to be of interest to the press.

As a final note on the appearance issue we should add that we recognize that having a public purpose for a disclosure does not preclude an employee from also having as a purpose the furtherance of a private interest. However, there are no facts in the report that suggest to us that this was Ms. Hanson's state of mind. If press leaks were imminent, as Ms. Hanson appears to have believed, any private advantage to be gained by knowledge of the existence of the referral would have been largely negated by the newspaper reports flowing from those leaks.

Because we saw nothing in the report that leads us to believe that Ms. Hanson violated § 2635.703 by a disclosure intended to further a private interest, we see no need to address the additional possible issue under that section of whether her disclosure was authorized by Mr. Altman.

The ethical principle in § 2635.101(b)(8), that an employee shall act impartially and not give preferential treatment to any private organization or individual, is implemented by subpart E and § 2635.702(d) of the standards. Subpart E provides that an employee should not participate in an official capacity in certain matters without first obtaining specific authorization if, in his judgment, persons with knowledge of the relevant facts would question his impartiality in those matters. The matters covered include a particular matter involving specific parties if the employee knows that it is likely to affect the financial interests of a member of his household or that a person or entity with whom the employee has any of the "covered relationships" described in subpart E is a party or represents a party in the matter. Section 2635.702(d) provides that "... an employee whose duties would affect the financial interests of a friend, relative, or person

The Honorable Lloyd Bentsen  
Page 11

with whom he is affiliated in a nongovernmental capacity" shall comply with any applicable procedures in subpart E before carrying out his duties.

It has been suggested that the September 29 meeting and other contacts between Treasury and White House officials comprised preferential treatment of President and Mrs. Clinton, in violation of the Standards of Conduct. However, the conditions necessary for such a violation are not present here. First, the officials involved were obviously not members of the Clintons' household. Nor did the officials have a "covered relationship" with the Clintons under the terms of subpart E. In addition, as noted above, there was an assumption here, arising from the unique nature of the Office of the President, that the contacts were made pursuant to a proper White House function. Under the circumstances, you could reasonably conclude that the contacts did not comprise preferential treatment under the standards of conduct.

It is unclear from the report what Mr. Altman's role in the disclosure of September 29 may have been. He stated that he does not recall having told Ms. Hanson to make the disclosure to Mr. Nussbaum and he does not recall having received Ms. Hanson's memorandum of September 30. Ms. Hanson's memorandum to him noting the completion of the task she felt he had directed does not provide assistance in analyzing what his state of mind might have been at the time any direction may have been given. We feel there is insufficient information to enable us to provide you with any further analysis of Mr. Altman's participation in this disclosure, if any.

#### 9/30 Phone conversation between Hanson and Sloan

Mr. Sloan recalls having received a telephone call from Ms. Hanson on September 30 during which she updated him on the press inquiry that had been received from Ms. Schmidt of The Washington Post. According to Mr. Sloan, she referred him to The New York Times article by Mr. Gerth dated in March of 1992. Mr. Sloan's notes dated 9/30, provided as Exhibit 6, appear to relate to that telephone conversation and would indicate that, by September 30, Mr. Sloan had learned information about aspects of the referral that would appear to be pertinent other than to the involvement of the Clintons.

Because Mr. Gerth's article was public information, that reference raises no issues under the standards of conduct. Since it appears that Mr. Altman may have faxed this article to Mr. Nussbaum in March of 1993, Ms. Hanson's reference to the 1992 article may have been provided simply to clarify that this was the information to which she had alluded in her statement to Messrs. Nussbaum and Sloan on the previous day.

The Honorable Lloyd Bentsen  
Page 12

Information about the contents of the press inquiry from Ms. Schmidt may well have been nonpublic. Since Ms. Hanson was advised by Mr. Nussbaum to communicate further developments on press leaks to Mr. Sloan, we believe it is appropriate to attribute to her the same purpose she had in making the disclosure the prior day. Accordingly, we have no reason to believe that the disclosure was made for the purpose of furthering a private interest and our analysis under the standards of conduct would be the same as above. There does not appear to have been a violation of the standards of conduct. Mr. Sloan's notes would suggest that information other than that contained in the press inquiry from Ms. Schmidt may have been conveyed by Ms. Hanson. Insofar as any such disclosure provided the White House information about the manner in which the referral might involve the President, the information would appear to be sufficiently related to the press inquiry that it should be subject to the same analysis.

Ms. Hanson's possible disclosure of information other than that relating to the President would seem to go beyond what was necessary to achieve her stated purpose of assisting the White House with its press function. However, there is nothing in the report to suggest the involvement of any private interest that would have motivated her to make these particular disclosures and, therefore, we do not have reason to believe they violated the standards of conduct.

**9/30 Fax from Hanson to Sloan**

Ms. Hanson stated that she faxed a copy of the September 30 Early Bird to Mr. Sloan, although Mr. Sloan does not recall having received this transmission. The Early Bird was an internal RTC document prepared for a select group of senior managers by the public affairs office to alert them to the latest press inquiries. It carried the caveat "for internal use only." While Mr. Altman was Acting CEO, the Early Bird was distributed to a very small number of Treasury employees.

Without regard to the technicalities of whether it is or is not encompassed by a FOIA exemption, we believe the Early Bird contained nonpublic information that had not actually been disseminated to the general public and was not authorized to be made available to the public on request.

However, insofar as Ms. Hanson's transmission of the Early Bird served to advise the White House of press inquiries from Ms. Schmidt relating to Madison, that information appears to have been conveyed with the same purpose as the information conveyed in the previously discussed telephone conversation with Mr. Sloan on the same day and is subject to the same analysis. Consequently, there does not appear to have been a violation of the standards of conduct.

The Honorable Lloyd Bentsen  
Page 13

**10/7 Phone conversation between Hanson and Sloan**

During the course of the telephone call that Ms. Hanson made on October 7, 1993, she advised Mr. Sloan of further developments with respect to press inquiries. Mr. Sloan's notes dated 10/7 are provided as Exhibit 6 and would indicate that press inquiries had been received from Mr. Gerth and Ms. Schmidt. This disclosure is subject to the same analysis as applies to Ms. Hanson's telephone discussion with Mr. Sloan on September 30 and does not appear to involve a violation of the standards of conduct.

**10/13 Phone conversation between DeVore and Gearan**

It is not clear who called to set up a meeting for the following day. Mr. DeVore stated he spoke to Mr. Gearan after he found out a meeting had been arranged at the White House. He suggested that Mr. Gearan attend. Mr. Gearan does not recall having received a call from Mr. DeVore. There is nothing in the record suggesting that information of any significance was imparted by Mr. DeVore in the course of the conversation, however, and, without regard to whose recollection may be more accurate, there does not appear to have been a violation of the standards of conduct.

**10/14 Meeting between DeVore, Steiner and Hanson from Treasury and Nussbaum, Gearan, Lindsey, Sloan and Eggleston from the White House.**

Essentially two types of information may have been conveyed to the White House at this meeting. The first was the existence and subject of the press inquiries Mr. DeVore had received. The second was the confirmation that a referral had, in fact, been made to the Department of Justice.

Most of the participants viewed this as Mr. DeVore's meeting, although he believed he was asked to attend. That is not crucial to the analysis. Mr. Lindsey's October 20 notes of the October 14 meeting are reproduced as Exhibit 9 to the IG report and the essential contents of Mr. Gearan's notes made during the meeting are set forth in the IG report. In most respects, the recollections of the participants are generally consistent with those notes. Most described the discussion as conducted by Mr. DeVore. Press inquiries received from Ms. Schmidt of The Washington Post and from the Associated Press were discussed. Mr. DeVore also described the information about Madison that he had received in an inquiry from Mr. Gerth of The New York Times. They generally recall that Mr. DeVore also described the information that Mr. Gerth was seeking. Mr. Gerth was seeking to ascertain the routing and status of a criminal referral which he understood had gone from the RTC's Kansas City office to RTC headquarters in

The Honorable Lloyd Bentsen  
Page 14

Washington and believed was being held up and not released to the Department of Justice. Mr. Gerth also wanted to know who had endorsed four checks.

According to Mr. Lindsey's notes, Mr. DeVore reported that he had confirmed with the RTC that the referral had been forwarded to the U.S. Attorney in Little Rock. Mr. DeVore's recollection is that he first learned in the course of the White House meeting that the referral had actually been completed. Mr. Steiner recalls that Mr. DeVore did not know before the meeting that the referral had been made. Mr. Katsanos' recollection was that Mr. DeVore had called in advance of the meeting in order to get information as to whether the referral had been made, but the timing of Mr. Katsanos' follow-up call responding to Mr. DeVore is unclear from Mr. Katsanos' statement.

We know of no RTC policy that specifically protects from disclosure the fact that Mr. Gerth or Ms. Schmidt had made a press inquiry regarding Madison. The precise content of that inquiry, however, is a different matter. The fact that substantive information about the Madison referral may have been imparted by either press inquiry does not change the character of the underlying referral information. The referral information, including the information that a referral had been made, was nonpublic information. If an employee in the course of his official duties becomes aware of information he knows or reasonably should know is nonpublic Government information, the source of that information does not change its character.

There is a disagreement about what Mr. DeVore knew about the criminal referral prior to this meeting, independent of the information imparted through the inquiries from Mr. Gerth. There is also disagreement as to what information Mr. DeVore disclosed at the meeting. Assuming that he had nonpublic information and disclosed it, then the focus of the analysis would be on whether Mr. DeVore's disclosure of the information was a knowing, unauthorized disclosure made to further the private interests of another.

Most other participants perceived that the purpose for the meeting was to discuss how Mr. DeVore should respond to Mr. Gerth's inquiry and the meeting included a discussion of whether Mr. DeVore should confirm that the referrals had been made so that Mr. Gerth would not erroneously report that they were being held up in Washington. Mr. DeVore characterized his purpose somewhat differently. He stated he wanted to help Mr. Gerth if he could, and he wanted to make sure the White House knew the Gerth "investigation" was underway. He characterized the meeting as a "discussion of what the issues spanned."

The Honorable Lloyd Bentsen  
Page 15

The discussion that occurred at the meeting seems to have been consistent with the perception of most other attendees that Mr. DeVore, if not actually seeking advice, was seeking to coordinate his press function with White House officials responsible for press inquiries on matters relating to Madison. Mr. Steiner stated that he and Mr. DeVore had noted that White House officials had been quoted or referred to in press accounts relating to Madison. It may have been that his purpose was, as he stated, to alert those officials to Mr. Gerth's inquiries. Mr. DeVore did not specifically articulate the purpose for which he intended that information to be used, but the discussion suggests that his purpose, at least in part, was to provide information that would be useful in responding to press inquiries. We saw nothing in the report to suggest he believed that the information would be used otherwise.

Mr. DeVore's statement that he also wanted to assist Mr. Gerth suggests that he may have had the additional purpose of obtaining information about the referral or the checks to answer Mr. Gerth's inquiries. As Assistant Secretary for Public Affairs and Public Liaison, Mr. DeVore seems to have felt that it was his responsibility to be as responsive as possible to this press inquiry. We do not believe, however, that Mr. DeVore's position at Treasury required him to be responsive to matters beyond the jurisdiction of the Department of the Treasury by disclosing information about this or any specific RTC referral. His disclosure to Mr. Gerth appears to have violated RTC's disclosure policy and, because of the lengths to which he went to obtain information for Mr. Gerth, it raises at least an appearance issue in our minds.

Mr. DeVore might have felt less necessity for the October 14 meeting had he appreciated the relationship between Treasury and the RTC. Mr. DeVore appears to have believed that the RTC was a bureau of the Department of the Treasury, rather than a separate agency. The policy of that separate agency was to neither confirm nor deny the existence of referrals to the Department of Justice. Adherence to this policy would have eliminated some of the necessity Mr. DeVore apparently perceived for coordinating his press function with White House press officials.

As Acting CEO of the RTC, Mr. Altman enlisted the assistance of several Treasury employees in performing his CEO function. According to Mr. Schmalzbach's memorandum at Exhibit 22, Mr. Altman, as Acting CEO of RTC, had authority under 12 U.S.C. § 1441a(b)(8)(B)(ii) to use the services of employees of any executive department and had the commensurate authority, as Deputy Secretary of the Treasury, to agree on Treasury's behalf to the RTC's use of Treasury personnel. These detail arrangements, however, were accomplished casually, without the reimbursement contemplated by the statute and without an appreciation by the Treasury personnel involved that they were thereby performing RTC



The Honorable Lloyd Bentsen  
Page 16

rather than Treasury functions and subject to RTC policies and procedures. Ordinarily, press inquiries regarding RTC matters would have gone to RTC.

Mr. Schmalzbach's memorandum explains that Treasury's role with respect to the RTC relates primarily to the Secretary of the Treasury's position as Chairman of the Thrift Depositor Protection Oversight Board and, more recently, has been characterized by greater involvement in RTC management. Mr. Schmalzbach's memorandum further explains that, under 12 U.S.C. § 1441a(a)(8)(A), the Oversight Board is not to be "involved in case specific matters involving individual institutions, specific asset dispositions or generally the day-to-day operations of the RTC." The referral discussed in the October 14 meeting fall into the "case specific" category. It appears to us that Mr. DeVore, in his Treasury capacity, should not have involved himself or Treasury in the Madison referral. To the extent that he was enlisted by Mr. Altman to perform RTC duties involving case-specific matters, he should have made himself aware of RTC's policy to neither confirm nor deny referrals. Ms. Hanson indicated that Mr. DeVore acted so quickly in giving information about the referral to Mr. Gerth that he preempted her ability to research the issue of disclosure. She, too, seems to have misunderstood Mr. DeVore's and her own role, for she had undertaken an inquiry into Treasury's, rather than RTC's, disclosure policy.

Because Mr. DeVore is no longer a Federal employee, you have no responsibility to further analyze or address his conduct in this matter, although you may wish to ensure that your press office understands the nonpublic nature of criminal referrals. We do not believe Mr. Steiner's or Ms. Hanson's participation in the October 14 meeting violated the standards of conduct, not because of the type of information involved, but because they, like most of the White House participants, seemed to have viewed the purpose of the meeting as one of assisting the White House and Treasury in performing their respective press functions.

#### 12/29 Meeting between Ludwig and the President

According to Mr. Ludwig's memorandum at Exhibit 20, during a Renaissance Weekend seminar, the President briefly asked whether Mr. Ludwig could provide advice and counsel on any legal/regulatory issues relative to the Whitewater matter. The President was not interviewed.

Mr. Ludwig does not appear to have provided any advice in response to the President's inquiry. His role as the recipient of this inquiry does not appear to involve a violation of the standards of conduct.

The Honorable Lloyd Bentsen  
Page 17

**12/30 Telephone call from Ludwig to Sloan**

Mr. Sloan stated that he returned a call to Mr. Ludwig who explained that the President had mentioned something about Madison and he asked for newspaper articles on the subject in case it should come up in a subsequent conversation with the President. Mr. Sloan related the request to Mr. Eggleston, who in turn called Mr. Klein who was attending Renaissance Weekend.

Mr. Ludwig's request for newspaper articles does not appear to involve a violation of the standards of conduct.

**12/29 Telephone call from Ludwig to Kennedy**

According to Mr. Ludwig, he placed a call to Mr. Nussbaum on December 29, but ended up talking with Mr. Kennedy to whom he stated his request to be provided with newspaper articles about Madison. Mr. Kennedy apparently referred him to Mr. Klein. Mr. Kennedy was not interviewed.

Mr. Ludwig's request for newspaper articles does not appear to involve a violation of the standards of conduct.

**12/29 Telephone call from Klein to Ludwig**

According to Mr. Ludwig he had a telephone conversation, or possibly spoke during a dinner at Renaissance Weekend, with Mr. Klein whom he described as being cautionary about any contact. Mr. Klein was not interviewed.

This conversation appears to have occurred after Mr. Eggleston telephoned Mr. Klein to inform him of Mr. Ludwig's conversation with the President and to ensure that Mr. Klein spoke to Mr. Ludwig so that he would have no further discussions of the Madison matter with the President. We assume this is what Mr. Ludwig meant by the description of Mr. Klein as "negative." Mr. Ludwig's receipt of this caution from Mr. Klein would not appear to involve a violation of the standards of conduct.

**12/30 Meeting between Ludwig, Klein and the President**

According to Mr. Ludwig, his encounter with the President and Mr. Klein in the hallway outside a Renaissance Weekend seminar involved a brief conversation in which they agreed that there would not be any discussion of the Madison/Whitewater issue.

This discussion does not appear to involve a violation of the standards of conduct.

The Honorable Lloyd Bentsen  
Page 18

**Jan 94 Telephone call from Ludwig to Williams**

Mr. Ludwig's call to Ms. Williams sometime after Renaissance Weekend involved him providing advice of a general nature that does not appear to involve a violation of the standards conduct.

**2/1 Telephone call from Altman to McLarty or Ickes**

Mr. Altman's call to either Mr. McLarty or Mr. Ickes on February 1 to arrange a meeting for the next day does not appear to involve a violation of the standards of conduct.

**2/2 Meeting between Altman and Hanson from Treasury and Nussbaum, Ickes, Williams and Eggleston**

This meeting was described by all participants as consisting of two distinct parts. The first part involved a briefing by Mr. Altman on the application of the statute of limitations to potential civil actions arising out of the failure of Madison. The second part involved a discussion by Altman of his possible recusal from matters involving Madison.

The participants' recollections as to the first part of the meeting do not deviate in any significant respect from the first eleven of the twelve talking points detailed in the document provided as Exhibit 12. Six of those talking points relate simply to the statute of limitations, its general application and the consequences that would flow as a matter of course with the expiration of the statutory period. This information is public rather than nonpublic information. Five of the eleven talking points relate to the application of the statute of limitations specifically to Madison. We assume that the date of the take-over of Madison was a matter of public record and that the February 28 date indicated in the third talking point as the date on which the statute of limitations would have run was public information ascertainable by factoring the takeover date into a statutorily prescribed computation. While the record does not specifically develop the point, we understand that the subjects of the first and eighth talking points were public information. On the basis of the record provided, we have no reason to believe that the information set forth in the tenth talking point regarding Mr. Ryan's and Ms. Kulka's positions was nonpublic information. And since it would seem to be little more than what a reasonable person would expect, we assume there was nothing of a nonpublic nature in the information in the eleventh talking point that the RTC analysis would be completed before the statutory period expires.

In the context of the briefing described above, Ms. Williams asked if the same information was going to be provided to private counsel for the parties. Mr. Altman said he thought so.

The Honorable Lloyd Bentsen  
Page 19

There is nothing in the report that suggests that the first part of the meeting involved a disclosure of nonpublic information and, thus, we do not believe § 2635.703 is implicated. We also do not believe that Mr. Altman's briefing involved a violation of the appearance principle at § 2635.101(b)(14) as applied to § 2635.703. Where the information conveyed is public rather than nonpublic information, we view that single, highly relevant fact as decisive in applying the appearance principle, which assumes knowledge of the relevant facts by a reasonable person. His response to the question about a possible briefing of private counsel does not implicate the standards of conduct.

If you should disagree with our view as to the character of the information conveyed by Mr. Altman during the February 2 meeting, your analysis should involve the considerations discussed in connection with Ms. Hanson's disclosures to Messrs. Nussbaum and Sloan on September 29. In that event, however, there is one additional consideration that, as a practical matter, may be decisive unless you find that Mr. Altman disclosed nonpublic information not reasonably within the ambit of the talking points. Mr. Altman's disclosure of the information contained in the talking points and his participation in the meeting for the purpose of conveying that information had been cleared in advance with an ethics official by Ms. Hanson. Under § 2635.107(b), disciplinary action will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of an ethics official, provided that, in seeking such advice, he has made full disclosure of all relevant circumstances. The talking points, which we regard as the single most relevant circumstance, were shown to Mr. Foreman who, we believe, correctly advised that the information was public. As a technical matter, we believe Altman's participation should have been cleared by an RTC ethics official, but as discussed above in connection with the October 14 meeting, we are aware of the manner in which Treasury officials were used to assist Altman in fulfilling his RTC responsibilities and believe his reliance on the advice of Treasury's, rather than RTC's, ethics official, is inconsequential in this case.

The second half of the meeting involved a discussion prompted by Mr. Altman's statement that he was thinking of recusing or had decided to recuse. In evaluating Mr. Altman's conduct, we do not view as a matter of any consequence the differing perceptions of the meeting participants as to whether Mr. Altman held any conviction with respect to recusal at the outset of the discussion. We know of nothing that would have prohibited Altman from discussing, even publicly, his thoughts about recusal and do not believe his discussion of recusal involved a violation of the standards of conduct.

Because it was the topic of the discussion during the second part of the February 2 meeting, this may be an appropriate point at

The Honorable Lloyd Bentsen  
Page 20

which to comment upon the subject of Mr. Altman's recusal and recusal in general. This Office concurred in the written advice Mr. Altman received from the RTC's Designated Agency Ethics Official which is provided as Exhibit 16 and we continue to regard that advice as correct. Mr. Altman's friendship with the President is not a covered relationship that would necessarily trigger the recusal procedures in § 2635.502 of the standards. It was within Mr. Altman's discretion to elect to use those procedures if he was concerned that the circumstances, including his relationship with the President, would raise a question concerning his impartiality. Under the applicable provisions of the standards of conduct, including § 2635.102(b), it was ultimately his decision to make, in consultation with the RTC's Designated Agency Ethics Official.

While we would never find fault with an individual's sensitivity to conflicts or appearances of conflicts, Mr. Altman's actions in this regard are somewhat confusing. "Recusal" is simply another word for nonparticipation and is used synonymously with the word "disqualification." One recuses or disqualifies by not acting in a matter. There is no need for actual recusal unless the circumstances would call for an employee's participation in some matter. As indicated in the memorandum Mr. Altman received from the RTC's Designated Agency Ethics Official, it is not necessary for an employee to decide whether to participate in any particular matter until such time as the matter comes before him. However, an employee can announce his intent to recuse in the event something should arise. This may have been what Mr. Altman thought he should do given questions that were being raised by Members of Congress.

It is important to note, however, that the impartiality provisions of the standards of conduct may not be relied upon by an employee as the basis for recusing himself from a matter because he simply does not wish to be involved or to exert the effort required. Under the standards of conduct, employees are expected to perform their duties fully unless there is a reason that their participation in a matter will result in an actual conflict, including an inability to act impartially, or will result in an appearance of conflict significantly detrimental to the public's legitimate perception of the fairness of the Governmental processes involved.

## **2/2 or 3 Telephone call from Altman to McLarty**

Mr. Altman stated that he called Mr. McLarty to advise him that he had decided not to recuse for the time being. Mr. McLarty recalls only that Mr. Altman called him to acknowledge that the previous day's meeting had taken place and that they discussed his dilemma about whether to recuse. Just as Mr. Altman was free to discuss the issue of his possible recusal with anyone he chose, he was free to advise anyone, including Mr. McLarty, as to his state of mind on the subject. This does not appear to have involved a

The Honorable Lloyd Bentsen  
Page 21

violation of the standards of conduct, nor would any conversation for the purpose of informing Mr. McLarty that the meeting had taken place. The above analysis with respect to Mr. Altman's participation in the February 2 meeting should apply to any discussion of the substantive content of the meeting he may have had with Mr. McLarty and, thus, the discussion does not appear to have involved a violation of the standards of conduct.

### **2/3 Meeting between Altman and Nussbaum**

During their brief encounter on February 3, Mr. Nussbaum recalls that Mr. Altman advised him that he probably wasn't going to recuse. Although Mr. Altman does not recall this discussion, any statements he may have made for the purpose of conveying his state of mind on the subject would not appear to have involved a violation of the standards of conduct.

### **2/3 Fax from Hanson to Nussbaum**

The document sent to Mr. Nussbaum on February 3 from a fax machine in Treasury's Office of the General Counsel is a copy of Mr. Leach's letter of the same date and its attachments. Ms. Hanson does not recall having sent the fax.

This document appears to have been made public by Mr. Leach on the date that it was dispatched and, thus, its transmittal to Mr. Nussbaum does not raise issues under the standards of conduct. An article entitled "Leach releases documents to show Whitewater's role" appears in the February 4, 1994 edition of The Washington Times. The article states that the letter was released the prior day, February 3, 1994, along with a staff memorandum and other documents, which we assume are the attachments to the letter. Copies of the checks that appear in the attachments were reproduced with the article. This transmission of a copy of Mr. Leach's letter does not appear to involve a violation of the standards of conduct.

### **2/3 and 4 Telephone calls between Hanson and Nussbaum**

We believe there were two telephone calls between Mr. Nussbaum and Ms. Hanson on February 2 or 3, although the list of contacts includes only one contact.

The first telephone call appears to have taken place on February 3. It is unclear who placed the telephone call. In the course of the ensuing conversation, Ms. Hanson told Mr. Nussbaum that she was continuing to research the issue of recusal. Mr. Nussbaum referred Ms. Hanson to the White House ethics expert, Ms. Nolan, and raised the possibility of turning the Madison civil case over to the Independent Counsel, whose charter covers civil matters.

The Honorable Lloyd Bentsen  
Page 22

The discussion between Ms. Hanson and Mr. Nussbaum on the subject of recusal was in the nature of discussions that occur routinely between attorneys with a common interest in research being undertaken. Ms. Hanson's role as the recipient of Mr. Nussbaum's suggestion to contact Ms. Nolan and of his observation about possibilities raised by the Independent Counsel's charter does not appear to have involved a violation of the standards of conduct.

In what would appear to be another telephone conversation that took place on February 3 or 4, Ms. Hanson was informed by Mr. Nussbaum that the Independent Counsel's charter was published in that day's Federal Register. She also may have been asked by Mr. Nussbaum how Ms. Kulka was hired for her position as RTC General Counsel. If so, it would have been in this conversation that she explained to Mr. Nussbaum that Mr. Altman had made the decision to hire Ms. Kulka.

The receipt of information in the nature of that conveyed by Mr. Nussbaum does not implicate the standards of conduct and we are not aware of anything inappropriate in Ms. Hanson's explanation that Mr. Altman had hired Ms. Kulka. Ms. Hanson's role in this telephone conversation does not appear to have involved a violation of the standards of conduct.

#### **2/3 Meeting between Altman, Ickes and Eggleston**

In this brief meeting that took place in the White House, Mr. Altman recalls that he advised Mr. Ickes that he had decided not to recuse. Mr. Ickes recalls a discussion of this nature and believes Ms. Williams may have been present. Mr. Eggleston recalls that both he and Mr. Ickes were present. Although the precise number of participants is in doubt, this discussion by Mr. Altman of his state of mind does not appear to involve a violation of the standards of conduct.

#### **2/3 Meeting between Hanson, Ickes, Eggleston and Williams**

Had the scheduling worked out as intended by Mr. Altman, Ms. Hanson would have been a party to his meeting with Mr. Ickes and others. Because Ms. Hanson was late in arriving, Mr. Altman had already related his decision not to recuse and Ms. Hanson's only role in the discussion that took place in the White House on February 3 was as the recipient of and respondent to a question from Mr. Ickes about who knew she had advised Mr. Altman to recuse. Ms. Hanson's factual response to Mr. Ickes' question does not appear to involve a violation of the standards of conduct.

The Honorable Lloyd Bentsen  
Page 23

**2/4 Telephone call from Foreman to Nolan**

Mr. Foreman's first telephone call to Ms. Nolan on February 4 involved a discussion of Mr. Altman's Vacancy Act appointment, application of the standards of conduct relevant to recusal and Mr. Foreman's own view of a personal appearance standard for recusal.

Mr. Foreman's discussion with Ms. Nolan was similar to the types of discussions that take place daily between executive branch ethics officials and the White House ethics expert on matters involving Presidential appointees. It does not appear to have involved a violation of the standards of conduct.

**2/4 Telephone call from Foreman to Nolan**

In the follow-up telephone conversation that took place on February 4, Mr. Foreman advised Ms. Nolan that he had contacted the RTC ethics official and had scheduled a meeting with OGE to discuss the recusal issue. There was some discussion of Mr. Leach's letter, portions of which would have been relevant to Mr. Foreman's and Ms. Nolan's discussions about recusal. As noted with respect to the telephone discussion that took place between Mr. Foreman and Ms. Nolan earlier the same day, the discussion was of a routine nature for employees with their respective ethics responsibilities. It does not appear to have involved a violation of the standards of conduct.

**2/8 Telephone call between Hanson and Nussbaum**

Ms. Hanson's thanks to Mr. Nussbaum for information about the Independent Counsel's charter does not appear to involve a violation of the standards of conduct.

**2/9 Telephone call from Foreman to Nolan**

In the February 9 follow-up on his previous telephone conversations with Ms. Nolan, Mr. Foreman asked whether the recusal to which Ms. Tigert had agreed in the course of her confirmation hearings should affect Mr. Altman's recusal decision. Mr. Foreman's call to coordinate recusal policy with the White House ethics expert does not appear to have involved a violation of the standards of conduct.

**Week of 2/14-18 Telephone call from Podesta or Stern to Steiner**

Mr. Steiner recalls that, during the week of February 14 through 18, he engaged in a telephone conversation with either Mr. Podesta or Mr. Stern and that one of them asked how the RTC had come to hire Mr. Stephens to handle the Madison case. Mr.



The Honorable Lloyd Bentsen  
Page 24

Steiner's role as the recipient of this inquiry does not appear to have involved a violation of the standards of conduct. Messrs. Podesta and Stern were not interviewed.

**Week of 2/14-18 Telephone call from Steiner to Podesta or Stern**

Mr. Steiner recalls that, during the week of February 14 through 18, he responded to Mr. Podesta's or Mr. Stern's earlier inquiry by advising them that Mr. Stephens had been selected in accordance with normal procedures by a panel which reviews bids. This seems to be information about the award of an RTC contract that the agency would have provided to any member of the public. Thus, Mr. Steiner's response does not appear to have involved a violation of the standards of conduct.

**2/16 or 17 Meeting between Steiner and Stephanopolous**

Mr. Steiner recalls a discussion with Mr. Stephanopolous on the Crime Bill and other issues that took place in the White House on February 16. In the course of the conversation, he sought Mr. Stephanopolous' opinion about Mr. Altman's possible recusal. Mr. Stephanopolous does not recall the discussion. Since Mr. Altman was free to discuss his thoughts on recusal with whomever he pleased, his subordinate's participation in those discussions does not appear to involve a violation of the standards of conduct.

**2/23 Telephone call from Eggleston to Hanson**

In the telephone call placed by Mr. Eggleston during the week of February 14, he cautioned Ms. Hanson to be prepared with an appropriate answer in case Mr. Altman were to receive a question about the February 2 meeting during the Oversight Board hearings scheduled for the following week. Ms. Hanson's role as the recipient of this caution does not appear to involve a violation of the standards of conduct.

**2/23 Telephone call from Steiner to Griffin**

Mr. Steiner's telephone call on February 23 to advise the White House that Mr. Altman might announce during the next day's hearings that he was stepping down as CEO conveys information relating to a Vacancy Act Presidential appointment that the White House should be made aware of. It does not appear to involve a violation of the standards of conduct.

**2/23 Telephone call from Altman to Ickes**

Mr. Altman's call on February 23 to advise Mr. Ickes that he would announce during the next day's hearings that he would be stepping down as CEO upon the expiration of his Vacancy Act

The Honorable Lloyd Bentsen  
Page 25

appointment was an appropriate communication for a Presidential appointee. Mr. Ickes' understanding of this telephone conversation was that Mr. Altman was talking about recusal. The call, in either event, does not appear to involve a violation of the standards of conduct.

**2/23 Telephone call from Ickes to Steiner**

The exchange that took place during this telephone conversation on February 23 was the result of a return call made by Mr. Ickes to continue the above conversation with Mr. Altman. The call was transferred to Mr. Steiner in Mr. Altman's absence. The only way we can reconcile the two accounts of the conversation that took place is to assume that, because of his involvement in prior recusal discussions, Mr. Ickes thought Mr. Altman's previous call had been about recusal, whereas Mr. Steiner understood correctly that Mr. Altman had been discussing "stepping down" at the termination of his Vacancy Act appointment. Mr. Steiner's role as the recipient of information to be conveyed to Altman does not appear to involve a violation of the standards of conduct.

**2/23 Telephone call from Hanson to Nussbaum**

Ms. Hanson stated that, pursuant to Mr. Altman's request, she called Mr. Nussbaum to tell him that Mr. Altman would be stepping down as CEO of the RTC at the end of March. This telephone call regarding the termination of Ms. Hanson's superior's Vacancy Act appointment does not appear to involve a violation of the standards of conduct.

**2/25 Telephone call from Steiner to Podesta**

Mr. Steiner recalls that the telephone call he made on February 25 was for the purpose of advising Mr. Podesta that Mr. Altman was again considering recusal. Mr. Steiner's role in conveying this information to Mr. Podesta does not appear to involve a violation of the standards of conduct.

**2/25 Telephone call from Steiner to Podesta**

According to Mr. Steiner, the second telephone call he made to Mr. Podesta on February 25 was for the purpose of reporting, after the fact, that Mr. Altman had announced his recusal. This factual report by Mr. Steiner does not appear to involve a violation of the standards of conduct.

**2/25 Telephone call from Stephanopolous to Steiner**

On February 25, while Mr. Altman was in his office, Mr. Steiner received a telephone call from Mr. Stephanopolous who expressed his concern about the manner in which Mr. Altman had

The Honorable Lloyd Bentsen  
Page 26

announced his recusal and about the circumstances under which Mr. Stephens had been chosen. Mr. Steiner understood that Mr. Stephanopolous was concerned that Mr. Stephens' involvement in the Madison case was a conflict of interest, given Mr. Stephens' vocal criticism of the Administration. Mr. Steiner's response to the concern about Mr. Stephens was to explain to Mr. Stephanopolous how Mr. Stephens had been selected, a fact he had ascertained in order to respond to a prior inquiry from either Mr. Podesta or Mr. Stern. Mr. Steiner recalls that he advised Mr. Stephanopolous it would be unwise to raise the issue of conflicts any further.

Just as in response to the previous inquiry from Mr. Podesta or Mr. Stern on the same matter, the information that Mr. Steiner conveyed to Mr. Stephanopolous about Mr. Stephens' selection by the RTC seems to be information about a contract award that the agency would have provided to the public. Mr. Steiner's role in providing that information and any subsequent advice he may have offered regarding the Stephens contract would not appear to involve a violation of the standards of conduct.

**2/25 Telephone call from Stephanopolous and Ickes to Altman**

Mr. Altman learned in this telephone conversation with Messrs. Stephanopolous and Ickes on February 25 that they felt he should have advised the White House before announcing his recusal to a reporter. According to Mr. Altman, he was also asked about Mr. Stephens' appointment. He did not know who Mr. Stephens was and the ensuing conversation involved Mr. Stephanopolous explaining Mr. Stephens' background. Mr. Altman's participation in this telephone conversation does not appear to involve a violation of the standards of conduct.

**2/25 Telephone call from Eggleston to Hanson**

Ms. Hanson's role in this telephone call received from Mr. Eggleston on February 25 was as the recipient of an inquiry as to whether Mr. Stephens was the lead attorney for the law firm representing RTC on the Madison matter. Her response that she would check into the matter does not appear to involve a violation of the standards of conduct.

**2/25 Telephone call from Lindsey to Altman**

During the telephone call Mr. Lindsey placed on February 25, Mr. Altman was asked about a press inquiry regarding Mr. Altman's possible receipt of instructions to provide a briefing to the President's personal lawyer. He told Mr. Lindsey about the February 2 meeting, that he had not received any such instructions and that no such briefing had taken place. Mr. Altman was asked by Mr. Lindsey to handle the reporter's inquiry. Mr. Altman's explanation of what occurred during and as a consequence of the

The Honorable Lloyd Bentsen  
Page 27

February 2 meeting does not appear to involve a violation of the standards of conduct.

**2/25 Telephone call from Nolan to Foreman**

In the course of a telephone conversation on another matter that occurred in February 25, Mr. Foreman suggested that Ms. Nolan might wish to see Mr. Altman's testimony from the prior day and he explained that Mr. Altman had been given Mr. Kusinski's memorandum on recusal. Neither the suggestion Mr. Foreman made nor the explanation he provided appears to involve a violation of the standards of conduct.

**3/1 Telephone call from Podesta to Altman**

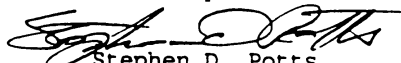
In the telephone conversation that occurred on March 1, Mr. Altman received an inquiry from Mr. Podesta regarding the fact that, in his testimony on February 24 he had not mentioned the two Fall meetings between Treasury and White House officials. This discussion, which also may involved Ms. Hanson, raises no standards of conduct issues.

**Additional contacts**

The chronology of contacts provided by Mr. Cutler as part of his testimony before the House Banking, Finance and Urban Affairs Committee on July 26 indicates that, in the days preceding the February 24 hearing, there may have been two additional contacts between Messrs. Steiner and Podesta that are not reflected in the report. One contact may have involved Mr. Steiner advising Mr. Podesta that Mr. Altman was considering announcing in his opening statement at the hearing that he expected to step down as CEO of the RTC on March 30. Any such contact would appear to be similar to that which took place between Mr. Steiner and Ms. Griffin on February 23 and would not seem to involve a violation of the standards of conduct. The other contact may have involved Mr. Podesta speaking to Mr. Steiner to ensure that Mr. Altman was adequately prepared for any questions about the February 2 meeting that might arise during the hearing. Any such contact would appear to be similar to that which occurred between Ms. Hanson and Mr. Eggleston on February 23 and would not appear to involve a violation of the standards of conduct.

I trust this analysis is of use to you in reaching your own conclusions.

Sincerely,

  
Stephen D. Potts  
Director

UNITED STATES SENATE  
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS

\* \* \*

IN RE: S. RES. 229

THURSDAY, AUGUST 4 1994

DEPOSITION OF JEAN E. HANSON

Washington, D. C.

Deposition of JEAN E. HANSON, called for further examination pursuant to agreement by counsel, at 8:40 p.m. in Room 535 of the Dirksen Senate Office Building, before JANE W. BEACH, Court Reporter, when were present:

J. WILLIAM CODINHA, ESQ.  
Special Majority Counsel  
JOSEPH G. BRAUNREUTHER, ESQ.  
Minority Counsel  
United States Senate Banking Committee  
On behalf of the Committee.

HARVEY L. PITT, ESQ.  
AUDREY STRAUSS, ESQ.  
Fried, Frank, Harris, Shriver & Jacobson  
1001 Pennsylvania Avenue, N.W.  
Washington, D. C. 20004-2505  
On behalf of the Deponent.

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-337-7700

800-336-6646

410-684-2550

## C O N F I D E N T I A L

C O N T E N T SWITNESSEXAMINATION

Jean E. Hanson (Resumed)

By Mr. Codinha	10
By Mr. Braunreuther	26
By Mr. Codinha	39
By Mr. Braunreuther	49

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-336-6646

410-684-2550

## P R O C E E D I N G S

(8:40 p.m.)

MR. CODINHA: Let's go right onto the record.

Ms. Hanson, thank you very much for returning tonight on such short notice.

Mr. Pitt, I want to thank you for making your client available to us.

As you know, Senator Riegle and the Committee has requested that we reconvene your deposition and that we ask you one set of questions that arises out of questions that have arisen because of testimony which has taken place at the hearings.

What my intent is is to lead in by telling what has gone on at the hearings--and I will read you the sections of the hearings. I will then show you your videotape, and I will ask you some questions about it.

We had explained earlier that that is really the parameters that we are talking about in this deposition.

I realize you have not had a whole lot of time to prepare for that, other than that area, so we will really try to confine it to there.

Ms. Hanson, I am not going to bother swearing you

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-336-6426

100-684-2550

L  
1

4

1 in again because you are still under oath. I would just  
2 remind you of that. That is just something we do at the  
3 beginning. It has nothing to do with any opinions that  
4 anyone holds. It is just something we tell people at  
5 depositions.

6 Ms. Hanson, as you may or may not know, Mr.  
7 Altman testified before this Committee on Tuesday, August  
8 2nd. During that testimony and in his prepared statement,  
9 Mr. Altman testified that you sat directly behind him, and  
10 that after he responded to Senator Bond's question--Bond's  
11 question being "Nobody in your Agency to your knowledge  
12 advised the White House staff that this was going to be a  
13 major--this could be a major source of concern?"

14 Altman's answer was "Not to my knowledge."

15 He turned to you and confirmed his answer.

16 That is the reason we have reconvened this  
17 deposition.

18 Now in Mr. Altman's statement--and I am now  
19 reading from the Transcript of Hearings, in his opening  
20 statement--I am at page 236, about halfway down--he says:

21 "Mr. Altman. Ms. Hanson testified yesterday that  
22 her discussion in September 1993 was at my

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-447-1700

800-336-6646

410-684-2550



1 request. I do not believe that to be the case.  
2 Recollections can differ, of course, especially  
3 on events that occurred five months earlier.  
4 There's nothing unusual in that. I just disagree  
5 with her recollection.

6 "Let me buttress this point in this way: Ms.  
7 Hanson helped prepare the questions and answers  
8 for my testimony about White House contacts. Ms.  
9 Hanson sat directly behind me during my  
10 testimony. Just after my response to Senator  
11 Bond, if you watch the videotape, I turn to her  
12 and she confirmed my answer. Then she and I had  
13 lunch together again afterwards. A week passed  
14 before Mr. Podesta's call which alerted me to the  
15 fall meetings. Ms. Hanson, Mr. Chairman, then  
16 pre-cleared my letter to Senator Riegle which  
17 stated that I had no prior knowledge of these  
18 meetings. She signed off on that.

19 "At not one of those times did she suggest--not  
20 one of those times did she suggest--that my  
21 recollection was faulty."

22 I'll stop there. It goes on, but it is not particularly

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

100-117720

100-117720

100-117720

1 pertinent.

2 I will now play the tape so you can see it.

3 (Videotape shown.)

4 MS. STRAUSS: But you want to go back and see not  
5 just that one question.

6 (Videotape continues to be shown.)

7 MR. CODINHA: Would you like me to replay that?

8 MS. STRAUSS: May we see the questions and  
9 answers that precede it?

10 MR. CODINHA: How far back?

11 THE WITNESS: Going back to maybe--

12 MR. PITT: It might be useful if we could lower  
13 the volume for a second so the reporter can hear--

14 MR. CODINHA: How far back do you want me to go?

15 MS. STRAUSS: Two or three questions. It is hard  
16 to pinpoint a spot.

17 (The videotape is rewound, et cetera.)

18 MR. PITT: Why don't we just shut that off. Let  
19 me just make an observation before the witness responds.

20 And I appreciate that there was a lot in the lead-up.

21 The videotape that we have just seen focused on  
22 one question. Then Mr. Altman's answer. And then the scene

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-336-6646

410-684-2550

1 where he turns to Ms. Hanson.

2 I think for the record it should be made clear  
3 that we have gone back. I think if you look at page 69 of  
4 the printed transcript and you skip the first comment, or  
5 two comments by Senator Bond and get to the first question  
6 at the top of the page, that was what we were looking for.

7 I do not think the witness needs to see it. I  
8 think we can indicate in the record that there is a context  
9 of questions that begin with Senator Bond saying:

10 "Senator Bond. When did you become aware of the  
11 RTC recommendations that further criminal  
12 prosecution be taken against Madison?"

13 I think if we start from there and go down to the point you  
14 have now referred to on the videotape, we don't need to play  
15 that. The question is whether the record will reflect all  
16 of the questions and answers.

17 I don't think we need to spend time reading them  
18 in.

19 MR. CODINHA: Well, because we are making a  
20 record, I am going to read them in right now. We are going  
21 to page 69 of the hearing before the Committee on Banking,  
22 Housing and Urban Affairs, which is the February 24th

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202.317.3700

800.336.6616

110.684.2550

1 Oversight Board.

2 MR. PITT: And if I may, if you could then go  
3 down to the question following the question that Mr. Altman  
4 answered on the videotape, the one posed to Ms. Ford. That  
5 I think is the record portion we would like.

6 MR. CODINHA: Going to page 69:

7 "Senator Bond. We would appreciate it.

8 Next, when did you become aware of the RTC  
9 recommendations that further criminal prosecution  
10 be taken against Madison?

11 "Mr. Altman. Last fall. I was advised that the  
12 question of a referral to the Justice Department  
13 was under consideration at the RTC. And, as  
14 other members of the RTC staff will attest, I  
15 said that normal procedures with no deviations  
16 whatsoever should be pursued, including chain of  
17 command procedures in terms of reaching that  
18 conclusion.

19 "I might tell you that typically decisions like  
20 that are made at the regional office level, and  
21 it was in this case.

22 "Senator Bond. Were you aware that the regional

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-336-6646

410-684-2550

1  
h

9

1 office had asked the national office to make a  
2 determination as to whether the Clinton's name  
3 should be in the new, expanded referral?

4 "Mr. Altman. No.

5 "Senator Bond. You did not know they were asking  
6 for the national office to make a determination?

7 "Mr. Altman. No. I was simply informed that  
8 this issue was on the table, and my reaction  
9 was--and I had only one conversation about it--  
10 that normal procedures should be followed. That  
11 is the way we are going to handle this thing from  
12 beginning to end.

13 "Senator Bond. How was the White House notified  
14 of the referral?

15 "Mr. Altman. They were not notified by the RTC,  
16 to the best of my knowledge.

17 "Senator Bond. Nobody in your agency to your  
18 knowledge advised the White House that this was  
19 going to be a major--this could be a major source  
20 of concern?

21 "Mr. Altman. Not to my knowledge.

22 "Senator Bond. Mrs. Ford, do you know if the

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

410-347-0770

410-336-6646

410-644-2550

1 White House was notified by the RTC?

2 "Mrs. Ford. No. We have had no involvement at  
3 the Oversight Board whatsoever."

4 That ends the reading from the Oversight Board hearings.

5 EXAMINATION

6 BY MR. CODINHA: (Resuming)

7 Q Now Ms. Hanson, my question to you is, focusing  
8 your attention on the testimony you have seen, the videotape  
9 you have seen, do you recall Mr. Bond's question and Mr.  
10 Altman's answer at the hearing?

11 A Yes.

12 Q Describe what you thought when you heard that  
13 question and answer, if anything.

14 A I understood the question and answer to refer to  
15 the RTC.

16 Q All right. And is that what you were thinking  
17 when you heard that question and answer?

18 A That's what I recall. I don't recall  
19 specifically what I was thinking at that particular moment  
20 in time.

21 Q When you heard that answer, did you think that  
22 Mr. Altman's answer was complete, or incomplete, if you had

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-376-6644

410-684-2550

1 determined that at the time?

2 A It was accurate to the best of my knowledge.

3 Q After that question and answer, if you look at  
4 the videotape, and when Ms. Ford is asked the question, when  
5 you see Mr. Altman turn and say something to you, and you  
6 appear to shake your head, which looks like a negative shake  
7 of the head, and Mr. Altman then turns around again, he says  
8 something to you and you shake your head, and I can't tell  
9 whether you said anything or not.

10 Mr. Altman has taken a position on what you have  
11 said.

12 What we would like to know today, and what the  
13 Senators want to know: To the best of your memory, what did  
14 Mr. Altman say to you, and what did you say to him?

15 A I don't recall Mr. Altman's exact words, but in  
16 substance he asked me whether his answer was wrong. And I  
17 don't recall what I said to him, but in substance it was  
18 that I didn't believe so.

19 I immediately, if you note on the video, turn  
20 then to Ellen Kulka, the General Counsel of the RTC who is  
21 seated next to me, and asked her in substance whether she  
22 thought the answer was wrong; and I recall that she, in

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

800.345.1770

800.336.6446

410.684.2350

1 substance that she said she didn't think it was wrong.

2 Again, I understood all these questions to be  
3 asked and answered in the context of the RTC. That's how I  
4 understood: the questions related to the RTC and that they  
5 were answered in that context.

6 I will say that at some point here I realized  
7 that we hadn't prepared Mr. Altman for this particular--  
8 these particular questions, and that there was no question  
9 and answer on it.

10 And I also recall at some point having a flash of  
11 remembering that I had spoken with Mr. Nussbaum in the fall.  
12 I didn't recall the specifics of the conversation or the  
13 events surrounding it.

14 I also recall not having a disquieted feeling  
15 about Mr. Altman's response to the questions, or any feeling  
16 that--a feeling that anything was being withheld.

17 And after the hearings were over I, as I have  
18 testified, knew that there were issues/questions that needed  
19 to be followed up on.

20 I don't recall that this was one of them.  
21 Although I will say that the following week when Mr. Podesta  
22 called Mr. Altman, and Mr. Altman told me that a question

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-336-6646

410-684-2550



1 had been raised about his answers to Senator Bond's  
2 questions, and we didn't have a transcript so we located  
3 Senator Bond's questions on a videotape and transcribed  
4 them, and they were only the two:

5 "Senator Bond. How was the White House notified  
6 of the referral?

7 "Mr. Altman. They were not notified by the  
8 RTC, to the best of my knowledge.

9 "Senator Bond. Nobody in your Agency, to your  
10 knowledge, advised the White House staff that  
11 this was going to be a major--this could be a  
12 major source of concern?

13 "Mr. Altman. Not to my knowledge."

14 When I looked at those two questions, which were  
15 the only questions that I had transcribed, out of context,  
16 although the answers to the questions were literally  
17 correct, I had a concern that in fact the answers were not  
18 in the spirit of the questions.

19 And it was that day, later on that day, that I  
20 started my preparation of my questions and answers, trying  
21 to refresh my recollection about the events that had  
22 occurred in the fall because I knew that the record would

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

212-517-1700

212-517-1700

212-517-1700

1 have to be supplemented to include that information.

2 Q I began by asking you what you said to Mr. Altman  
3 and what he said to you when you shake your head 'no.'

4 So if I understand correctly what you have said,  
5 it is that when he turned to you, you, by shaking your head,  
6 and by his question being in essence 'is my testimony  
7 correct,' you were affirming that you believed his testimony  
8 was correct?

9 A That's my recollection.

10 Q Okay.

11 MR. PITT: In the context that she has now  
12 described. I mean, that was one of the reasons why we  
13 wanted the record to be complete about the whole series of  
14 questions.

15 THE WITNESS: And that I confirmed that  
16 information with Ellen Kulka, as well. I understood, as I  
17 stated, the questions to be asked and answered in the  
18 context of the RTC.

19 BY MR. CODINHA: (Resuming)

20 Q Okay. That brings to mind a question that  
21 Senator Sarbanes raised with another witness.

22 That is--or actually it may have been with you--

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-637-1700

800-336-6646

410-684-2550

1 that when you went to the White House on September 29th, did  
2 you believe you were representing the RTC or the Justice  
3 Department--

4 MS. STRAUSS: The "Justice Department"?

5 MR. CODINHA: I'm sorry, the Treasury. I have  
6 been looking for scope objections all day.

7 (Laughter.)

8 BY MR. CODINHA: (Resuming)

9 Q The Treasury.

10 A I believe that I was acting in my capacity as  
11 General Counsel of the Treasury.

12 Q So when you heard--if I understand correctly what  
13 you are saying about what is reflected on page 69--when you  
14 heard the question and understood it for RTC, you were  
15 separating your role as a Treasury Department employee, and  
16 that is why you didn't indicate to Mr. Altman at that point  
17 that you had had the meeting?

18 A That's correct.

19 Q Now another thing that we are concerned about in  
20 this testimony is that Mr. Altman says that "a week passed  
21 before Mr. Podesta's call which alerted me to the fall  
22 meetings. Ms. Hanson, Mr. Chairman, then pre-cleared my

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202.217.1170

800.336.6446

410.684.1350

1 letter to Senator Riegle which stated I had no prior  
2 knowledge of these meetings. She signed off on it. At not  
3 one of those times did she suggest--not one of those times  
4 did she suggest--that my recollection was faulty."

5 Is Mr. Altman correct in that?

6 A To the best of my recollection, yes.

7 As I have stated, I didn't recall at the time  
8 that the March 2nd letter was written, or prior to the  
9 March--between the time of the hearing and the time that the  
10 March 2nd letter was sent, I didn't recall that I had spoken  
11 with Mr. Altman about the meetings in the fall.

12 So the letter that was sent on March 2nd was  
13 correct to the best of my recollection at the time it was  
14 sent.

15 Q Ms. Hanson, I'm going to ask you this because I  
16 know the Senators are going to be very concerned about this  
17 distinction that you're making--I'm now going back to what  
18 happened at the hearing--the distinction that is being made  
19 for how the notification happened, and when Mr. Altman  
20 said--let me read exactly what he says.

21 He says, or Senator Bond says:

22 "Senator Bond. Nobody in your Agency to your

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-8700

800-333-6040

410-684-2550

1 knowledge advised the White House staff that this  
2 was going to be a major--this would be a major  
3 source of concern, this notification?"

4 And Mr. Altman says: "Not to my knowledge."

5 If I understand what you said correctly, it's  
6 that you were from Treasury when you went over to the White  
7 House and therefore Mr. Altman was technically correct  
8 because you were a Treasury employee and not an RTC  
9 employee?

10 A That's right.

11 I never considered myself to be an RTC employee.  
12 So when I thought about the question and understood it to  
13 relate to the RTC, I didn't believe that it included me  
14 because I always viewed myself as functioning in my capacity  
15 as the general counsel of the Treasury and not in any  
16 capacity for the RTC.

17 Q Okay.

18 Again, I know this is going to be a question that  
19 is going to come up:

20 Do you consider that that distinction was a  
21 distinction with a difference in the way this question was  
22 asked?

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

100-117-11700

100-117-11700

100-117-11700

1 I mean, didn't you understand that the Senators  
2 wanted to know how the information got to the White House?

3 A As I've stated, when I heard the question asked  
4 and answered, I understood it to be asked and answered in  
5 the context of the RTC, which I did not believe included me  
6 as the general counsel of the Treasury.

7 However, as I've also said, when I transcribed  
8 the two questions the following Tuesday on March 1st, and I  
9 looked at them out of context and considered them, I was  
10 concerned that, although the answers were technically  
11 correct--I continued to think the answers were technically  
12 correct--I did not think the answers to the questions  
13 answered the spirit of the question, and in fact I believe  
14 that that was what the Senators were looking for, the  
15 information as to how the White House was notified. And  
16 that's why I thought, clearly, that the record was going to  
17 have to be supplemented to make that clear.

18 Q And when you did that--and I believe you said  
19 this was around March 1st?

20 A (Pause.)

21 Q The Podesta call, I think we have narrowed down,  
22 happens around March 1st. Podesta says it happens March

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

212.347-3300

800.336-6846

212.684-2550

1 1st. Altman seems to say around March 1st.

2 A That's my recollection.

3 Q Did you tell Mr. Altman that, that his answer was  
4 no longer accurate?

5 A I recall that there was a discussion about it.

6 I don't recall--

7 Q A discussion between whom?

8 A I don't remember who was there. I know that  
9 Michael Levy was there.

10 Q You were there.

11 A I was there.

12 Q Michael Levy was there.

13 A Mr. Altman was there.

14 I don't remember who else.

15 I know--

16 Q Where was "there"?

17 A In Mr. Altman's office.

18 Q And who called the meeting together, this group  
19 of people together?

20 A I don't recall.

21 Q As best you can recall, what was the substance of  
22 the conversation that took place?

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-336-6646

410-684-2550

1           A       The conversation related to whether--Mr.  
2       Podesta's statement that there was concern over Mr. Altman's  
3       answers, what--what the response to Mr. Podesta's question  
4       was.

5                   And there was a discussion as to whether it  
6       needed to be supplemented, the record needed to be  
7       supplemented.

8           Q       Who was that discussion between?

9           A       The participants in the meeting.

10                   I know that there was--I recall that there was a  
11       view expressed that the answers were correct, technically  
12       correct, because it related to the RTC and was answered in  
13       that context.

14                   As I stated, I was concerned that, although, even  
15       if technically correct, that the answers did not answer the  
16       spirit of the question, which was why, as I have stated, I  
17       started working on my questions and answers to recall--to  
18       refresh my recollection on the events that had occurred,  
19       because I knew that the record had to be supplemented with  
20       the information.

21           Q       Who took the position? Of the three people at  
22       the meeting, who took the position that the answers were

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-336-6646

410-684-2550



1 "technically correct"?

2 A I believe that there were more than three people  
3 at the meeting. I don't recall who else was there.

4 I don't recall.

5 I believe that, if I recall correctly, Mr. Levy  
6 took that position, but I can't recall what the prevailing  
7 view was.

8 As I've stated, I knew and I had a concern that  
9 the answers did not answer the spirit of the question and  
10 knew--

11 Q And did you voice that view?

12 A I believe I did.

13 Q Well can you try a little more?

14 You believe you did.

15 What do you base that on?

16 Do you have a memory of saying something?

17 A I recall that I did.

18 Q And who did you address that to?

19 The group in general, or Mr. Altman?

20 A The group in general, to my recollection.

21 Q To the best of your memory, what did you say to  
22 the group?

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-647-3700

800-336-6646

410-684-2550

1           A     I don't recall. The substance was that the  
2     answers, although technically correct, didn't answer the  
3     spirit of the question.

4           Q     Did this group discuss the fact that Mr. Podesta  
5     of the White House had called and raised a number of  
6     concerns with Mr. Altman's testimony?

7           A     The only issue that I recall being told was  
8     raised by Mr. Podesta was Mr. Altman's answers to Senator  
9     Bond's questions. I do not recall hearing that Mr. Podesta  
10    raised any other issues with Mr. Altman.

11          Q     Was Mr. Altman an active participant in these  
12    discussions?

13          A     I don't recall. They took--the discussion took  
14    place in his office.

15          Q     Do you recall him saying anything?

16                 Did he agree with anybody?

17                 Did he disagree with anybody?

18                 Can you recall at all what he said?

19          A     I don't recall.

20          Q     Do you recall having a strong feeling as to  
21    whether the record should be corrected to reflect what  
22    you've told us here tonight?

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-336-6646

410-684-2550

1           A     I recall having a strong feeling that the record  
2     was going--was going to require supplementation. As I  
3     stated, at that point I did not have a transcript and had  
4     not had an opportunity to review the transcript in full.  
5     But it was my view that the record was going to have to be  
6     supplemented. That's my recollection.

7           Q     And when Mr. Altman said that you pre-cleared his  
8     letter and signed off on it, did you consider the letter  
9     that he sent--I assume this must be the March 2nd letter--to  
10    be the letter that corrected the statements that you just  
11    told us about?

12                   I will show you the letter.

13           MR. PITT: It is on page 336 of the printed  
14    hearings.

15           THE WITNESS: I understood this letter to be  
16    designed to address a specific issue. That was, to answer  
17    Senator Bond's question of who notified the White House.

18                   And that was the reference to two conversations  
19    that took place between Treasury staff and White House  
20    personnel, one of those conversations being my conversation  
21    with Mr. Nussbaum.

22                   As I stated, on March 3rd there was an article

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-336-6646

410-684-2550

1 that appeared in The Washington Post that described the two  
2 fall meetings. This letter was designed and intended to put  
3 the Committee on notice of those two meetings, but not, in  
4 my view, to completely supplement the record as it related  
5 to those two meetings because it didn't have the specific  
6 information to respond to Senator Bond's question.

7 That remained to be completed in full in response  
8 to a review of the entire record.

9 BY MR. CODINHA: (Resuming)

10 Q And then on March 3rd there is another letter.  
11 Did you also review and pre-clear that letter?

12 A I reviewed the letter of March 3rd.

13 Q And was that meant to supplement the record on  
14 the Bond question?

15 A (Pause.)

16 On which question?

17 Q On Senator Bond's question about the contacts and  
18 elaborate and expand the record as you just discussed was  
19 the intention of you and Mr. Altman to do?

20 MS. STRAUSS: I am confused about what question  
21 we are talking about. What question by Senator Bond and the  
22 contacts?

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage  
202-347-3700 800-336-6646 410-684-2550

MR. CODINHA: The one we played--

MS. STRAUSS: On how the White House was notified  
of the criminal referrals?

BY MR. CODINHA: (Resuming)

Q Yes.

A The March 3rd letter?

Q Yes.

A No.

Q And the March 11th letter, did you review and  
sign off on that one?

A No.

Q Did you ever attempt to supplement the record any  
more than you've described today?

A No.

As I've stated, I expected there to be a full  
review of the transcript. I had understood from Mr. Harris  
on two occasions that there were going to be additional  
questions that were going to be furnished.

I expected that both the record would be reviewed  
and additional questions received, and the record completed  
in full quickly.

But because of the intervening events, that

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

212-347-3700

800-336-6646

410-684-2550

1 didn't happen.

2 Q And the "intervening events" you're describing  
3 are the Grand Jury's notification of subpoena?

4 A In particular, yes.

5 And also Secretary Bentsen's commencement of--

6 Q The OGE--

7 A --for the OGE investigation.

8 MR. CODINHA: I have no further questions.

9 Joe, do you want to inquire?

10 EXAMINATION

11 BY MR. BRAUNREUTHER:

12 Q Ms. Hanson, I believe in answering the question  
13 it was pretty clear, but I want to make sure it is clear.

14 On March 1st when you had this conversation with  
15 Mr. Altman and others, did you disclose to them that you had  
16 been the messenger with respect to notifying the White House  
17 about the criminal referrals?

18 A (Pause.)

19 I--

20 Q If you have a problem with "messenger," let me  
21 withdraw that question.

22 In the conversation, did you disclose to Mr.

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-336-6646

410-684-2550

1 Altman everything about the meeting you had with Mr.  
2 Nussbaum?

3 A There were several meetings that took place. I  
4 don't recall in which meeting there was a conversation, but  
5 Mr. Altman stated that he understood from Mr. Podesta that  
6 there had been two meetings in the fall, and that--or two  
7 conversations in the fall, and that I had spoken with Mr.  
8 Nussbaum about the criminal referrals.

9 And that, in addition, there had been another  
10 meeting in which Mr. DeVore participated.

11 I don't recall what I told Mr. Altman beyond that  
12 I recalled that I had done that.

13 My initial recollection was that I had spoken  
14 with Mr. Nussbaum on the telephone, and that's what I said  
15 to Mr. Altman.

16 He said that he understood Mr. Nussbaum recalled  
17 that the conversation took place following a pre-brief on  
18 the Waco investigation.

19 And when I was told that, it refreshed my  
20 recollection that indeed that was when the conversation had  
21 taken place.

22 I spoke briefly with Mr. Podesta about that.

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-336-6646

410-684-2550

1                   That is Mr. Nussbaum's recollection and my  
2 refreshed recollection.

3                   I don't recall the specifics of the discussion.  
4 I do recall that there was a discussion as to why the  
5 meeting had taken place, and I stated that it was--it took  
6 place because of the eminent press leaks, the eminent press  
7 inquiries.

8           Q       So it's fair to say that at the conclusion of  
9 this meeting on March 1st, Mr. Altman clearly understood  
10 that you had notified Mr. Nussbaum about the criminal  
11 referrals sometime in the fall?

12                   Right?

13           A       Let me state, I don't recall when this meeting on  
14 that discussion took place. It may have taken place on  
15 March 1st. It may have taken place on March 2nd. But he  
16 understood that I had spoken with Mr. Nussbaum in the fall  
17 about eminent press inquiries relating to the criminal  
18 referrals.

19           Q       And did he indicate to you that Mr. Podesta had  
20 also brought to his attention the fact that the fall meeting  
21 pertained to criminal referrals?

22           A       I don't recall.

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-336-6646

410-684-2550



1           Q     I believe in your earlier testimony you referred  
2 to a conversation that Mr. Altman had with Mr. Podesta.

3                     Correct?

4           A     Right.

5           Q     Now do you recall whether Mr. Altman indicated to  
6 you whether or not Mr. Podesta had told him, Mr. Altman,  
7 that the fall meetings pertained to criminal referrals?

8           A     I don't recall.

9                     But I do recall that the conversation related to  
10 responses to--Mr. Altman's responses to Senator Bond's  
11 questions relating to the criminal referrals and the  
12 notification of the White House of the criminal referrals.  
13 And it was in that context that Mr. Podesta had called him.

14          Q     In this conversation, did you point out to Mr.  
15 Altman that one of the problems with his answer was that he  
16 was technically the CEO of the RTC, and that when Senator  
17 Bond asked him that question it was expected that he would  
18 give an answer with respect to people he controlled?

19                    MS. STRAUSS: I'm not sure I understand the  
20 question.

21                    Do you understand the question?

22                    THE WITNESS: No.

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-336-6446

410-684-2550

1 MS. STRAUSS: Would you mind?

2 BY MR. BRAUNREUTHER: (Resuming)

3 Q Why don't you tell me in your own words what it  
4 was about the spirit of the question which was not answered,  
5 which apparently disturbed you?

6 MS. STRAUSS: Why don't we have the question in  
7 front of us. That would help.

8 (Pause.)

9 MR. CODINHA: Just read off what page you are on.

10 THE WITNESS: I am on page 69 of the printed  
11 hearing record.

12 There were two questions that Senator Bond asked.  
13 The first one was: How was the White House notified of the  
14 referral?

15 "Mr. Altman. They were not notified by the RTC,  
16 to the best of my knowledge.

17 "Senator Bond. Nobody in your Agency, to your  
18 knowledge, advised the White House staff that  
19 this was going to be a major--this could be a  
20 major source of concern?

21 "Mr. Altman. Not to my knowledge."

22 In my view, those two questions taken out of

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-336-6646

410-684-2550

1 context, although in context they appeared to relate to the  
2 RTC, the questions coming before and the questions coming  
3 after, but when those two questions were focused on, Senator  
4 Bond had asked a specific question "How was the White House  
5 notified of the referral."

6 And it was my view that the following question,  
7 "nobody in your Agency, to your knowledge" reading on,  
8 although it technically could be--there was a discussion as  
9 to whether it technically modified the prior question, in my  
10 view the better reading of the question, looking at it  
11 carefully and out of context, was that it was intended to  
12 encompass a wider area of, a wider group of people than just  
13 the RTC; and that Senator Bond's question, specific  
14 question, "How was the White House notified of the  
15 referral?" needed to be answered.

16 BY MR. BRAUNREUTHER: (Resuming)

17 Q Did you make your concern known to Mr. Altman on  
18 March 1st when you had this meeting?

19 A (Pause.)

20 Q Let me withdraw that.

21 You just expressed rather clearly what your  
22 concern was, and I don't want to paraphrase it because we

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

212-347-3700

800-336-6646

410-684-2550

1 know that has been a problem in the past. But I believe in  
2 substance what you said is that Senator Bond wanted to know  
3 how the White House got notified about the criminal  
4 referrals, and you felt that the answer was not responsive  
5 to that question.

6 Correct?

7 A I believe that the answer, looking at the two  
8 questions out of context, the answers, although they might  
9 have been technically correct, were not responsive in the  
10 spirit of the question.

11 I recall that I communicated that--

12 Q To Mr. Altman?

13 A --to the group in Mr. Altman's office. And, as I  
14 stated, I was concerned. My concern about it manifested  
15 itself in commencing my questions and answers to try to  
16 refresh my recollection so that the record could be  
17 supplemented appropriately.

18 THE REPORTER: I am sorry but I must ask, are you  
19 saying "criminal referral" singular, or plural? Am I unsure  
20 whether I am hearing you correctly.

21 THE WITNESS: I mean plural.

22 Q Was Mr. Altman present and did he participate in

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-336-6646

410-684-2550

1 the discussion which sought to reconcile this answer on the  
2 basis that Senator Bond's second question was a limiting  
3 question?

4 A As I stated, the conversation took place in his  
5 office and he was there. He was present. I don't recall  
6 how much he participated in the discussion.

7 Q Do you recall whether he made any comment about  
8 whether or not to put that kind of limitation on this  
9 question would be perceived as an insufficient reason for  
10 not providing all the information responsive to the  
11 question?

12 A You will have to ask your question again.

13 Q Why don't you tell me who it was who was  
14 suggesting--let me ask it this way:

15 Was there any concern at the meeting that the  
16 fact that these meetings pertained to criminal referrals  
17 should not be disclosed to the Senator?

18 A You'll have to ask me your question again.

19 Q Did anybody at this meeting express the concern  
20 that it would be embarrassing to disclose to the Senate that  
21 these meetings pertained to criminal referrals?

22 A Not to my recollection.

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-462-3700

800-336-6646

410-684-2550

1           Q     Were there any arguments advanced about why you  
2     should not just come out with a straightforward answer  
3     describing how the criminal referrals were passed on to the  
4     White House?

5           A     I recall there was a discussion as to whether the  
6     questions could appropriately be read to be limited to the  
7     RTC and RTC officials.

8                     I don't recall the conclusions--conclusion  
9     reached in that meeting, but as I stated I was sufficiently  
10    concerned that I started to refresh my recollection, because  
11    I knew that this information would have to be--for the  
12    record would have to be supplemented to include it.

13          Q     Do you know why the March 1st letter did not  
14    refer to the criminal referrals?

15          A     The March 2nd letter?

16          Q     The March 2nd letter, excuse me.

17                   MR. PITT: Just so the record is clear, I think  
18    we are looking again at page 336 of the printed record which  
19    has it, and in the second paragraph it does reference  
20    Senator Bond's questions.

21                   BY MR. BRAUNREUTHER: (Resuming)

22          Q     But let me ask you with respect to that comment,

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-333-6646

410-644-2550

1 the question that you were concerned about was the question  
2 as to how whether the White House had been notified about  
3 the criminal referrals; correct?

4 A Correct.

5 Q It wasn't a question simply about fall meetings  
6 or other contacts; correct?

7 A Senator Bond's question related to notification  
8 of the White House of criminal referrals.

9 This letter, as I understood it, was intended to  
10 alert the Committee, in response to Senator Bond's question  
11 that was posed, that the White House was notified in one of  
12 these two conversations between Treasury staff and White  
13 House personnel.

14 Q In your opinion, did this letter cure the defect  
15 in the response to the question asked by Senator Bond as to  
16 how the White House was notified of the referral?

17 A In my view, this letter was intended for a  
18 limited purpose of putting the Committee on notice of these  
19 two conversations that were going to be described in a  
20 newspaper article that was appearing the next day.

21 As I have stated, I expected there to be a full  
22 review of the record transcript and additional questions,

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-336-6646

410-684-2550

1 and that the record would be supplemented with the specific  
2 answers to the specific questions.

3 I didn't expect that this letter--I didn't  
4 believe that this letter did that; and I didn't believe that  
5 that was its purpose at the time it was sent.

6 Q Do you know whether Mr. Altman thought that this  
7 letter did that, as you said it?

8 A I don't know what was in his mind.

9 That was what--I've given you what my view of  
10 this letter was.

11 Q Let me just ask you a couple more questions.

12 Going back to the February 24th hearings, when  
13 Mr. Altman turned to you, you in fact did know at that time  
14 about the meeting you had had with Mr. Nussbaum; correct?

15 A At some point during that sequence of questions,  
16 I had a flash about speaking with Mr. Nussbaum.

17 I don't recall whether that was before or after  
18 Mr. Altman turned to me. I don't recall.

19 Q Well can you tell us whether or not you drew this  
20 distinction between status with the RTC or status with the  
21 Treasury on the spot when Mr. Altman turned to you?

22 A In terms of my participation?

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-336-6646

410-684-2550



1 Q Yes.

2 A No, I didn't do that; because I never thought of  
3 my participation in any terms other than my participation as  
4 the General Counsel of the Treasury. It was just not the  
5 way that I thought about it.

6 I understand now that there is--that there have  
7 been questions and attention has been focused on the roles  
8 of various people in different capacities. That simply  
9 wasn't the way that I thought about it.

10 Q So to the extent there is some technical  
11 distinction, it was not operating in your mind at the time?

12 A Not at all.

13 Q So you didn't rely upon that distinction at the  
14 time as a basis for excluding certainly people from--

15 Well, withdrawn. I have no further questions.

16 MR. PITT: Just let me point out so the record is  
17 clear, because I think I see where you are going.

18 What I believe the witness has indicated is that  
19 when she heard the questions sitting there, she heard them  
20 in context. And in context, I think she has said she  
21 thought they were answered based on what she understood at  
22 the time correctly.

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-336-6646

410-684-2550

1           It was only when she saw them out of context that  
2 she realized that you could look at these questions and  
3 conclude that they were not answered appropriately.

4           I think that is the distinction that you have  
5 made?

6           THE WITNESS: That is right.

7           And, that I never considered myself to be other  
8 than a Treasury employee.

9           BY MR. BRAUNREUTHER: (Resuming)

10          Q       But I just want to make clear that this technical  
11 distinction was not a distinction which you drew immediately  
12 on the spot with any kind of reflection on the issue?

13          MS. STRAUSS: I am not sure I understand the  
14 question. I think she is saying--

15          MR. PITT: If you are asking--maybe this will  
16 help. One question, and you should ask whatever questions  
17 you want, but one question you might be asking is: Was it  
18 an effort made in effect to look at this in a technical way  
19 to conclude, sitting there, that the questions were answered  
20 correctly?

21          The other way to ask it is: How did she perceive  
22 herself?

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-336-6646

410-684-2350

1 I think she has already indicated that she  
2 thought of herself as Treasury General Counsel. So when she  
3 is listening to questions about the RTC, that is why the  
4 videotape does show that she turns to Ms. Kulka after she  
5 responds to Mr. Altman.

6 That I think is the distinction between the two  
7 questions that could be asked of her.

8 MR. BRAUNREUTHER: Do you have any more  
9 questions?

10 MR. CODINHA: Yes, I do.

11 BY MR. CODINHA: (Resuming)

12 Q Ms. Hanson, I have taken a moment and just looked  
13 at the rest of the hearing record which goes through page  
14 77, from 69 to 77. I don't see any other references which  
15 are to criminal referrals or referrals in that record.

16 If you would like to take a moment and read that  
17 section just to see if it helps you remember when you had  
18 this flash of recognition that you remember the Nussbaum  
19 meeting, if you begin at page 69, do any of those questions  
20 or answers--and I am not going to bother reading them into  
21 the record, but do any of those questions and answers help  
22 you to remember when you had that flash that you talked

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-462-1700

800-336-6646

410-684-2550

1 about earlier?

2 A (Pause.)

3 I have been through this, and I have thought  
4 about it, and I just don't recall.

5 MR. PITT: Let me also say, just for the record--

6 MR. CODINHA: I am going to ask a couple more  
7 questions, but you can certainly put something on the record  
8 now if you would like.

9 MR. PITT: I just want to say that the question  
10 implied as I heard it, and I may have misheard it, that  
11 another question might trigger the question, which is  
12 certainly a possibility; thinking about a prior question  
13 could also trigger a flash.

14 BY MR. CODINHA: (Resuming)

15 Q Well let me just ask.

16 Do you remember, what it a question you heard  
17 that made you trigger on the Nussbaum meeting?

18 A I don't recall.

19 Q To the best of your memory, did you realize at  
20 the time Mr. Altman turned to you after the Bond questions  
21 that you were the person who notified the White House of the  
22 referral?

ACE-FEDERAL REPORTERS, INC.

202-347-3700

Nationwide Coverage  
800-336-6446

410-684-2550

1 A As I stated, at some point--

2 Q During the hearing?

3 A --I had a flash that I had spoken with Mr.  
4 Nussbaum about it. I don't recall specifically when that  
5 was. It was after Senator Bond asked his question.

6 Q And you responded to Mr. Altman that his answer  
7 was correct--I believe you've testified you responded to Mr.  
8 Altman that his answer was correct because of the fact that  
9 you were a Treasury employee and not an RTC employee and  
10 therefore it was technically accurate?

11 Is that correct?

12 A I didn't think about it in those terms, and I  
13 didn't draw that distinction.

14 When I heard questions relating to the RTC, I did  
15 not believe or have the understanding that that related to  
16 me. I understood that I was a Treasury employee, and so  
17 when questions were asked about the RTC and RTC activities,  
18 I didn't understand them to relate to me.

19 Q Let me ask you, then.

20 On page 69, if the question was deleted, if the  
21 question Senator Bond asks--and I am going to the middle of  
22 the page:

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-336-6646

210-684-1550

1 "Senator Bond. Nobody in your Agency to your  
2 knowledge advised the White House staff that this  
3 was going to be a major--that this could be a  
4 major source of concern?

5 "Mr. Altman. Not to my knowledge."

6 If that question weren't there, then would you have felt  
7 that there didn't need to be any correction to the record on  
8 this subject of who notified the White House?

9 A I don't understand your question.

10 Q If Senator Bond had not asked the follow-up  
11 question, being nobody in your agency to your knowledge  
12 advised the White House staff that this was going to be  
13 major--this could be a major source of concern," and Mr.  
14 Altman says "Not to my knowledge," if that were gone--

15 MR. PITT: So that the only question would be:

16 "Senator Bond. How was the White House notified  
17 of the referral?

18 "Mr. Altman. They were not notified by the RTC,  
19 to the best of my knowledge."

20 BY MR. CODINHA: (Resuming)

21 Q Would it have been your position that it didn't  
22 need a correction?

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-336-nada

410-684-2550

1           A       I don't know how to answer that.

2           Q       Well if I'm not phrasing the question correctly--  
3 my question was based on the fact that when Senator Bond  
4 says "nobody in your agency," he is broadening the question  
5 from RTC to include Treasury, and that is what I thought was  
6 triggering the reason why you thought it was an expanded  
7 answer.

8                   If I am incorrect about that--

9           MR. PITT: I think that is the way you are  
10 reading it.

11           MR. CODINHA: That is certainly the way I am  
12 reading it.

13                   BY MR. CODINHA: (Resuming)

14           Q       Was that your interpretation of it when you read  
15 it on March 1st, or saw it on March 1st?

16           A       I read "in your agency" to mean the RTC.

17                   Although, as I've stated, I believed that,  
18 although the answer was technically correct read in that  
19 light, that it didn't respond to the spirit of the question.

20           MR. PITT: If you look at the first question he  
21 asked, "How was the White House notified of the referral?"  
22 You will see there is no reference to "agency" or anything.

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage  
202-347-3700           800-336-6646           410-684-2550

1 THE WITNESS: That's correct.

2 BY MR. CODINHA: (Resuming)

3 Q I understand that.

4 A And I had understood the "in your agency" to be a  
5 modification of "how was the White House notified of the  
6 referral."

7 So that the context in which these questions were  
8 asked was the RTC. And in that context, technically  
9 correct. But as I stated, when looked at out of context,  
10 although technically correct, they didn't respond to the  
11 spirit of the question.

12 Q Did you, after you had this sort of flash that  
13 you said and sort of remembered the Nussbaum meeting while  
14 Mr. Altman was still testifying, did you tell Mr. Altman at  
15 the hearing about your memory of the Nussbaum meeting?

16 A No.

17 Q Was there a reason you didn't tell him about  
18 that?

19 A He was testifying. There wasn't an opportunity  
20 during the hearing to have that kind of discussion with him.

21 Q Did you think it was important enough that you  
22 should have told him, slipped him a note concerning your

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-336-6646

410-684-2550



1 meeting with Nussbaum?

2 A Not at the time.

3 As I have stated, I understood his answers to be  
4 correct in the context--to the best of my knowledge--in the  
5 context in which the questions were asked and answered.

6 It was only when I saw the questions out of  
7 context, the two of them themselves, that I was concerned  
8 that, although technically correct, they did not respond to  
9 the spirit of the question.

10 Q Right. And Mr. Altman says that you went back  
11 with Mr. Altman that day and had lunch, or a whole bunch of  
12 people had lunch.

13 Did you mention to him at the lunch about this  
14 remembrance of the Nussbaum meeting?

15 A I did not "go back" with Mr. Altman. He went  
16 back separately.

17 Q He testified that you had lunch with him, and  
18 that I believe there were some other people there.

19 Do you recall that happening?

20 A I do.

21 Q And did you mentioned that to him, the fact that  
22 you remembered the Nussbaum meeting, to him at that lunch?

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-8700

800-336-6446

410-684-2550

1           A       No.

2                   As I've stated, there were a number of--there  
3       were a number of items in the testimony that I believed  
4       needed to be reviewed and possibly supplemented or  
5       corrected.

6                   The response to this particular question wasn't  
7       one of them.

8           Q       And it wasn't until you looked at the record and  
9       saw it that you believed it could be taken a different way?  
10      Or when looked at out of context you saw that it might  
11      require amplification or expansion?

12          A       That it would require, in my view, amplification.

13                  MR. PITT: Just so the record again is clear, I  
14      think what she said was they took the two questions that  
15      Senator Bond asked and transcribed them off a videotape, and  
16      you reference alluded to a "record."

17                  THE WITNESS: Right. We looked at only those two  
18      questions, which was all that we had to look at. It was  
19      then that I had the concern that, although technically  
20      correct, they were not responsive to the spirit of the  
21      question.

22                  BY MR. CODINHA: (Resuming)

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-447-3700

800-336-6646

410-684-2550

1 Q Did you also consider at any point when you were  
2 giving Mr. Altman--you know, when you indicated his answer  
3 was correct--that since Mr. Altman had been the one who sent  
4 you to the September meeting, that he had made the same  
5 distinction and was responding purposely by saying it was an  
6 RTC--answering for the RTC rather than the broader for the  
7 Treasury and the RTC?

8 MS. STRAUSS: Could I hear that question again,  
9 because I am not sure I understood it.

10 BY MR. CODINHA: (Resuming)

11 Q Did you consider that, since Mr. Altman had sent  
12 you to this September meeting--that has been your testimony  
13 and I believe that is the position you have taken--that he  
14 had made the same distinction which you have now described  
15 that the question could be read very narrowly to be just the  
16 RTC, that he was responding purposely in a narrow fashion?

17 MS. STRAUSS: Did she ever consider that?

18 Her testimony has also been that she did not  
19 recall that he knew that at the time, at that moment in time  
20 during the testimony. So I'm not sure if you are asking if  
21 at any point in time.

22 BY MR. CODINHA: (Resuming)

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-336-6646

410-684-2550

1 Q Well let me ask and narrow it just to that time.

2 Did you recall that at the time that he was the  
3 one who sent you?

4 A I did not recall that.

5 MR. CODINHA: Okay. I don't have any further  
6 questions.

7 MR. PITT: Just for the record, there was some  
8 reference I think that was made to a lunch. Was this a  
9 private lunch with you and Mr. Altman in which you two had a  
10 lengthy discussion?

11 THE WITNESS: No. There were a number of people  
12 there. I recall Mr. Altman was standing up, and ate a  
13 sandwich. He was there for a brief period, and left for a  
14 meeting.

15 BY MR. CODINHA: (Resuming)

16 Q Let me just ask one other thing, since Mr. Pitt  
17 raises that.

18 Did you take any opportunity between the time of  
19 that lunch and the time you viewed the videotape to remind  
20 Mr. Altman of the flash you had had at the hearing?

21 A As I stated, I did not have a disquieted feeling  
22 about the answer that he gave at the hearing. It was only

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage  
202-347-3700 800-336-6646 410-684-2550

1 when I saw the questions out of context that they gave me  
2 concern.

3 MR. BRAUNREUTHER: I just want to pin one thing  
4 down.

5 BY MR. BRAUNREUTHER: (Resuming)

6 Q Before the March 2nd letter was written, you did  
7 have an opportunity to discuss this matter thoroughly with  
8 Mr. Altman; right?

9 A I wouldn't say that we discussed it "thoroughly,"  
10 but we discussed this; yes.

11 Q And in the course of that discussion, was it  
12 clear that the notice of the criminal referrals came from  
13 Mr. Roelle?

14 A I don't recall that.

15 Q Do you recall whether you discussed with Mr.  
16 Altman on March 1st that he had instructed you to go to the  
17 White House to notify the White House of the criminal  
18 referrals?

19 A I didn't recall on March 1st or 2nd when this  
20 conversation took place that--

21 Q I don't want to interrupt you, but it did take  
22 place before the letter was written.

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

212-347-3300

200-336-2426

410-684-2550

1 MS. STRAUSS: What took place?

2 MR. BRAUNREUTHER: This conversation, whether it  
3 is March 1st or March 2nd.

4 THE WITNESS: Which conversation? I'm sorry?

5 MR. BRAUNREUTHER: I believe you described a  
6 conversation with Mr. Altman, aren't you?

7 THE WITNESS: I have described several  
8 conversations with Mr. Altman. If you could--

9 BY MR. BRAUNREUTHER: (Resuming)

10 Q What I would like to do is focus on the period  
11 before the first supplementary letter was submitted to the  
12 Senate, which was March 2nd. You had a number of meetings  
13 with Mr. Altman prior to the time that the March 2nd letter  
14 was prepared and sent; right?

15 A I had several meetings, yes.

16 Q And in a number of these meetings you did discuss  
17 your concerns about whether or not the answer given at the  
18 hearing is responsive to Senator Bond's question; right?

19 MS. STRAUSS: Did she testify to more than one?  
20 I am getting confused here.

21 THE WITNESS: I am getting confused, as well.

22 MR. BRAUNREUTHER: Maybe it is my fault.

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage  
202-347-5770 800-336-6046 410-684-2550

1 MS. STRAUSS: May I also say, I think we have  
2 gone well beyond the scope. We have been here for far more  
3 questions than were originally suggested to us. As Mr.  
4 Codinha originally noted, we are here on very short notice  
5 and without adequate opportunity to prepare.

6 MR. BRAUNREUTHER: That is fine.

7 I think, in fairness, I think we have covered the  
8 central point that we wanted to cover. That is not to say,  
9 and I would hope it would not be the case, that is not to  
10 say the Senators might not have some follow-up questions.

11 MR. PITT: I think if there is any--just so the  
12 record is clear, though, if there is any particular  
13 substantive point, we are not interested in cutting anything  
14 off. The witness is here to be as helpful and as  
15 cooperative as she can be.

16 MR. CODINHA: I think at this point we have  
17 answered the basic questions. I do not think it is useful  
18 to get into the whole debate that was the subject of the  
19 deposition and the hearing.

20 MR. PITT: I agree with that. I just do not want  
21 the record to be left with any reflection that--the witness  
22 is here voluntarily, and she is willing to be as responsive

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-336-6646

410-684-2550

1 as possible.

2 MR. CODINHA: Mr. Pitt, let me say that on the  
3 part of Chairman Riegle, and I am sure on the part of the  
4 Ranking Member, the Senators may want to have your client  
5 come in and testify in an open hearing about the subjects  
6 that she has testified to tonight.

7 Tomorrow is probably going to be the last day of  
8 the hearings, so you should just be advised that she may be  
9 on very short notice again tomorrow. I cannot tell you what  
10 they are going to want.

11 We have asked that this transcript be expedited  
12 so we can get a copy as soon as we can, which should be  
13 tomorrow morning, and we will let you know as soon as we  
14 know whether they want Ms. Hanson to come in.

15 MR. PITT: That is fine.

16 To the extent that they are not going to want any  
17 further testimony, if you could indicate that as well I  
18 would be personally grateful to know that.

19 MR. CODINHA: We will let you know as soon as we  
20 know. Thank you.

21 (Whereupon, at 9:50 p.m., the further deposition  
22 of Jean Hanson was adjourned.)

ACE-FEDERAL REPORTERS, INC.

Nationwide Coverage

202-347-3700

800-336-6646

410-684-2550



## HEARINGS RELATING TO MADISON GUAR- ANTY S&L AND THE WHITEWATER DEVEL- OPMENT CORPORATION—WASHINGTON, DC PHASE

---

FRIDAY, AUGUST 5, 1994

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
*Washington, DC.*

The Committee met at 9:42 a.m., in room SD-106 of the Dirksen Senate Office Building, Senator Donald W. Riegle, Jr. (Chairman of the Committee) presiding.

### OPENING STATEMENT OF CHAIRMAN DONALD W. RIEGLE, JR.

The CHAIRMAN. Let me now move to our witness who is before us today.

We have now—we will today—conclude this phase of our investigation required by the Senate into two of the three matters originally set forth in Senate Resolution 229. The third item has had to be set aside at the request of the Special Counsel, and that has been done, and it will be dealt with at a later time.

One of the key instructions that we received in Senate Resolution 229 requires the following, and I just want to read it into the record because I think it relates, in important part, to the testimony that we have the opportunity to take today from Mr. Cutler.

We are charged in the resolution to, quote, "Make a comprehensive public report to the Senate and to make such recommendations, including recommendations for new legislation and amendments to existing laws, and any administrative or other actions as the Committee may determine to be necessary and desirable."

In other words, what changes in practice, law, or procedure may be needed to help us avoid some of the problems that have arisen in this instance.

Mr. Cutler, who is here, serving now not only as Special Counsel to the President, but as a person who has had a distinguished legal career over many decades and has served previously as a Counsel to two other Presidents.

During the course of your remarks today, I would particularly appreciate it, Mr. Cutler, if you have recommendations that come to mind, in the course of either your presentation or the testimony and exchange of views with Senators, please share them with us. There are four items that I think have arisen where I, particularly, would like you to give us any guidance that you may have as we consider what we may need to do in the future.

First, I think the question of notice to the President of nonpublic law enforcement information is a matter that has been presented and we've discussed and I think it's important that we think about it from a policy point of view with respect to the future.

The second would be the matter of recusals. We had some considerable discussion, again, even last evening, as to how and under what circumstances recusals should take place, particularly as they relate to independent regulatory areas. I think we need some discussion and perhaps additional work in the area of marking out exactly how those are to be done in the future.

Third, the issue of the role of the White House Counsel and what that role should be as it relates to the decisions of officials outside the White House who are discussing and weighing recusal issues themselves.

Finally, I think another policy issue that's come to the surface here is the practice and wisdom of Executive Branch officers serving in two roles at the same time, and where there becomes a confusion of those roles and certain inherent conflicts that come with that. I won't go into the details because they're familiar to all Members.

I think, in those four areas particularly, there are policy issues that are now presented by these case facts that cause us to have the need to consider how practices, procedures, and laws may need to be changed to deal with the future.

So, with that, Mr. Cutler, we want to welcome you. I know you have a statement to deliver. I'm going to ask you now if you'll stand and take the oath.

Do you testify that—do you swear that the testimony you're about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. CUTLER. I do, Mr. Chairman.

The CHAIRMAN. Very good. Thank you. We've been going in virtual nonstop session in order to try to complete our work this week so that we could be ready for Health Care next week.

We'll be prepared to have your statement at this time.

#### **STATEMENT OF LLOYD N. CUTLER SPECIAL COUNSEL TO THE PRESIDENT, WASHINGTON, DC**

Mr. CUTLER. I have a very brief prepared statement, Mr. Chairman, and then I'll be glad to take your questions.

Since March 10, 1994, I have held the position of Special Counsel to the President. Since April 4, 1994, I've been performing the duties of the Counsel to the President. In this statement, I will cover the four points that you addressed.

The CHAIRMAN. Thank you.

Mr. CUTLER. When I came aboard, White House Chief of Staff, Mack McLarty, asked me to undertake a review of the so-called Treasury-White House contacts. The results of that review are set forth at length in my written statement before the House Banking Committee on July 26, 1994. A copy of that statement is attached to my statement here today and I will just summarize some of the main points.

President Clinton has directed me and the White House staff to cooperate fully and openly both with the investigation of Independ-

ent Counsel, Robert Fiske, and with the oversight Committees of the Congress. We have done so, and we appreciate your recognition, Mr. Chairman, yesterday, of our cooperation.

Although Presidents have traditionally been very sparing in allowing White House aides to testify before the Congress, President Clinton has waived executive privilege as to this inquiry, and no White House staff witness has refused to appear.

We have produced thousands of pages of documents requested by the Committees. We think we have set a new record in the level of cooperation between the White House and a congressional Committee engaged in investigating conduct within the White House. We recognize the right of Congress to conduct this inquiry, and we take it very seriously.

As you know, Independent Counsel, Robert Fiske, has interviewed, deposed, or taken before the Grand Jury every Treasury and White House official involved. Mr. Fiske concluded that there was no basis for a criminal prosecution under the ethics laws or other laws, any of the criminal laws, as to any of the Treasury or White House officials who took part in these contacts. He expressed no opinion on whether these contacts involved any violation of any noncriminal ethical standards or gave rise to any other concerns because that was not his job.

As to the White House staff members, those are the questions that Chief of Staff McLarty asked me to review when I returned to the Counsel's Office, and the results of that review are covered in this statement.

As you also know, the Office of Government Ethics has now reviewed the factual findings of the Treasury Inspector General and has issued its formal opinion, concurring that no violation of any ethical standard—these are the so-called Standards of Ethical Conduct for the Executive Branch—occurred by any current Treasury or RTC official.

I have reached the same conclusion as to the White House officials and, based on the facts as I reported them to the nonpartisan Office of Government Ethics, that office has informally concurred.

But the contacts did have some troubling aspects on the White House side, as well as the Treasury side, and those are what I would like to concentrate on in my statement.

The first relates to Mr. Altman's recusal, a subject which has occupied much of this Committee's hearings.

As you know, the same Office of Government Ethics has concurred, or had concurred, with the determination of Treasury and RTC ethics officials in February of 1994, that Mr. Altman had no legal obligation to recuse himself from Madison Guaranty/Whitewater matters, and that a decision on whether or not to recuse lay within his personal discretion.

The Office of Government Ethics has also informally confirmed my conclusion that no White House official violated any ethical standard with respect to this recusal issue.

However, in my judgment, Mr. Nussbaum's statements at the famous February 2, 1994, meeting, plainly suggested his preference that Mr. Altman not recuse himself in the circumstances, and Mr. Altman may have so understood him. This may have influenced Mr. Altman's decision on February 3, 1994, to defer recusal.

Even though this did not, in my opinion, or that of the Office of Government Ethics, violate any ethical standard, there is a broader question as to whether it was appropriate for any White House staff member to make this preference known to Mr. Altman.

The answer to that question seems clearer when we view it in hindsight, of course, than it may have appeared to be at the time.

I am sure that everyone concerned acted in complete good faith and, as several Members of this Committee have noted, there are good reasons for not recusing when there is no legal or ethical duty to do so.

But, in my judgment, Mr. Altman should have decided this question without discussing it with the White House. And once the question was raised with the White House on February 2, 1994, I believe that, in the light of all the factual and political circumstances relating to Madison Guaranty and Whitewater, if the White House were to express any opinion on this subject, it should have encouraged Mr. Altman to recuse himself immediately.

Let me add that that is as much a political judgment, especially in hindsight—it's much more of a political judgment than a legal judgment.

Even though—and this is important—even though Mr. Altman did not finally recuse himself until February 25, 1994, none of the Treasury-White House contacts resulted in any actions being taken to influence the ongoing investigations of Madison Guaranty.

The record of this hearing, as well as my own review and the review undertaken and supervised by the Office of Government Ethics, all establish these facts: First, before Mr. Altman recused himself, Mr. Altman did not participate in the RTC decision to make criminal referrals or any other RTC decision relating to a particular Madison Guaranty/Whitewater matter, and he made it clear to the nonpolitical RTC officials that he would not do so; second, the nonpolitical RTC officials who have testified before you confirmed that no one in the Treasury or the White House brought any pressure to bear on them, and that all of the RTC's decisions relating to Madison Guaranty were made by the career staff and by the career staff alone; third, before Mr. Altman recused himself, the criminal referrals went forward to the Department of Justice; fourth, the statute of limitations on Madison-related claims was extended by Congress, thanks, in part, to Senator D'Amato, and signed into law by the President; and fifth, and also before Mr. Altman's recusal, the President's political critic, Jay Stephens, was retained to pursue possible civil claims. Mr. Stephens is still on the job.

Nothing happened—I repeat—nothing happened to influence the criminal or civil inquiries into Madison Guaranty or to stop them from going forward.

Next, I want to turn to another subject that the Committee has debated, whether it is unusual or unethical for an agency with law enforcement responsibilities to give the White House a heads-up when a criminal investigation is launched involving a high Government official or the President himself.

I testified to the House Committee that, in my opinion, such a heads-up is both customary and ethical, so long as the heads-up is not misused to influence the outcome of the inquiry.

My reasons for those conclusions are set forth in an op-ed article in last Wednesday's Washington Post, and a copy of that article is attached to the statement.

The CHAIRMAN. And we'll make that a part of the record, without objection.

Mr. CUTLER. I think it was made a part of the record yesterday, Mr. Chairman. I will be glad to answer questions about it, and ask for your help in how we can devise rules to make sure that no such heads-up can or will be misused.

Mr. Chairman, there was another troubling aspect of the contacts, and that is the somewhat loose and impromptu manner in which they took place.

I have said that, while the various contacts violated no ethical standard, in my judgment it would have been better if some of these contacts had never occurred, and if fewer White House staff members had participated.

When I reviewed these incidents in their totality, I found there were too many people having too many discussions about too many sensitive matters, matters which were properly the province of the Office of the White House Counsel.

The contacts, in my view, were not sufficiently channeled between White House Counsel and Treasury Counsel, and there were too many conversations in which no counsel at all participated.

In retrospect, we did not meet as high a performance standard as we should have set for ourselves. We have, therefore, taken additional measures to assure that future contacts between the White House and Executive Branch agencies with law enforcement functions will be beyond reasonable challenge.

First, in March of this year, we reminded everyone on the White House staff of the rule that no such contacts relating to a particular law enforcement investigation may be initiated without the prior approval of the White House Counsel.

As the Committee has noted, some of the Treasury-White House contacts were initiated or permitted by White House staff members without the prior approval of the Counsel, even though Counsel's memoranda requiring prior approval have been in effect since February of 1993. And we—we, the White House Counsel's Office—need to make these reminders more pointed and more frequent.

Second, as a result of this review, we have concluded that contacts relating to a specific law enforcement investigation by White House staff members other than those in the Counsel's Office are inadvisable, even if they're approved by the White House Counsel, and that in the future, all such contacts should be between the White House Counsel or his or her Deputy, and the General Counsel or Deputy of the agency involved.

These are the understandings we already have in place with the Attorney General and her Deputy, and we plan to extend them to other Executive Branch agencies with law enforcement functions as well.

Third, we are drafting rules of conduct for future contacts, including heads-up contacts, between the Office of the White House Counsel and Executive Branch agencies with law enforcement functions on particular investigative matters, especially those involving

high-ranking Government officials, defining the circumstances under which such contacts are appropriate or not appropriate.

We recognize that clean lines of demarcation will be difficult to draw and that, in particular cases, judgment and discretion will have to be applied.

We will review these drafts with the law enforcement agencies, and we hope to issue them promptly. We would also be happy to discuss them with this Committee and other appropriate Committees of the Congress.

Fourth, Mr. Chairman, with respect to the last of your questions about dual roles for a single Government official, I think it's high time that Congress turn to amending the Vacancy Act. It is the terms of the Vacancy Act that limited Secretary Bentsen's choice of who would be the Acting Chairman of the RTC, and more or less compelled him to suggest that Mr. Altman receive that job.

The Vacancy Act provides that a vacancy can only be filled—in a confirmable position, that is—for a maximum of 120 days, and can only be filled by another official whose appointment has already been confirmed by the Senate.

It's hard to see why we have such a provision, but at the time when this vacancy existed, early in the Clinton Administration and before a more or less permanent nomination had been made for the post of CEO of the RTC, Secretary Bentsen had to pick someone who had already been confirmed for a position in the Government. And he and Mr. Altman, I think, were among the only two or three Treasury finance-related officials who had been confirmed at that stage of the new Administration. That is why, along with Mr. Altman's experience, he chose Mr. Altman, at a time, I should mention, when Whitewater was not even a flicker on anybody's screen. He chose him, not because anyone ever dreamed that the RTC would be involved some day in a potential criminal referral, or civil actions involving the Clinton Administration, but because he could only choose among the already-confirmed officials.

I suggest it's high time that that requirement ought to be removed so that the Secretary and the President, when vacancies exist, would have a wider choice of people to appoint to perform the acting role.

In conclusion, Mr. Chairman, some mistakes were undoubtedly made in the course of providing the White House with the information the President needed to perform his constitutional duties effectively. With your help, we have taken, and will continue to take the steps necessary to improve that process.

We should remember that the primary issue raised in these hearings is whether the machinery of Government was misused by the White House to influence the outcome of a law enforcement inquiry in its own favor.

The evidence shows, unequivocally, that this did not occur. After thorough investigations by Independent Counsel Fiske, by the Treasury and RTC Inspectors General, the White House Counsel's Office, the Office of Government Ethics, and now the Senate and House Banking Committees, we now know that no White House or Treasury official took any action to stop or slow any criminal or civil proceeding involving Madison Guaranty. The machinery of Government has not been misused.

As these hearings draw to a close, I hope the Congress and the Administration can return to their primary responsibilities. Of course, I recognize their oversight responsibilities. But it is their primary responsibility to work together to govern decisively, fairly, and for the benefit of all the people.

With your permission, Mr. Chairman, let me add a word about your hearing last Friday concerning Mr. Fiske's report on Mr. Vincent Foster's death.

Mr. Foster was a childhood friend of the President and admired by numerous members of the White House staff. Although I knew him only slightly, I am told he was hard-working, deeply intelligent, a good colleague, and a treasured member of the White House family. To the people who knew him, his death was unexpected and devastating. On the day he died, a curtain of sadness descended on the White House.

On June 30, 1994, Mr. Fiske published a thorough and voluminous report of his findings concerning Mr. Foster's death. I've read that report and I believe it proves, beyond reasonable doubt, that Mr. Foster's death was indeed a suicide that occurred in Fort Marcy Park, as originally reported by the Park Police. According to Mr. Fiske, and I quote: "The evidence overwhelmingly supports this conclusion and there is no evidence to the contrary."

Mr. Fiske's report also stated that his team "found no evidence," and I'm quoting again, "that issues involving Whitewater, Madison Guaranty, CMS"—I think that's Mr. Hale's company—"or other personal legal matters of the President or Mrs. Clinton were a factor in Foster's suicide."

Since these Whitewater/Madison Guaranty matters are the main reason for this Committee's hearing, and Mr. Foster's death has been found to be unrelated to these matters, we hope that the Committee will accept Mr. Fiske's report without chasing down every new question that conspiracy theorists will always raise about the violent death of any prominent person.

We're still debating whether Secretary Seward, I believe, took part in the attempt to assassinate President Lincoln.

Even The Wall Street Journal's editorial page, one of Mr. Foster's most persistent critics, has accepted the findings of the Fiske Report. After a year of lurid, personally invasive, and totally unsubstantiated speculations, surely it is time for decent people to leave Mr. Foster's bereaved family in peace.

In a statement they released 10 days ago, the Foster family wrote:

We love Vince and miss him terribly. He was an honorable man and he deserves to be treated with respect. On this anniversary of his death, our fervent hope is that this matter now will recede from public view and that the family will be left alone to deal with its loss in private.

That is their wish. Let it be ours as well.

Thank you, Mr. Chairman and Members of the Committee.

The CHAIRMAN. Thank you, Mr. Cutler. There are a number of matters that we'll want to discuss with you today.

I want to begin by saying, as Chairman of the Committee, and speaking for the Committee, and others can express themselves, that I appreciate the cooperation you've given us in terms of not only all the witnesses that we asked for coming forward, volun-

tarily, from the White House, but also all the documents and information that we requested. When any questions arose, we were able to resolve them agreeably, Senator D'Amato and I, working with you and your people, and that's enabled us to do our work. That's the way it should be.

The fact that it occurred in a smooth fashion when we were under a 5-week deadline to get started, was necessary and facilitated greatly the work that we needed to do. I want to acknowledge that and say that's been very helpful to our work.

Mr. CUTLER. Thank you, Mr. Chairman. It was possible, I think, because of the cooperation of the Majority and Minority Counsel, Mr. Codinha and Mr. Chertoff.

The CHAIRMAN. We try to make that the hallmark of this Committee. Senator D'Amato and I worked very closely together to resolve any and all matters, and I'm very appreciative of his cooperation in that regard.

One particular sticking point with me, and I want to say it to you because I want to convey the message publicly, not just to the Treasury Department, which I've done, but through you to the Executive Branch. And, that is because the Executive Branch, in a sense, is many parts, including the Treasury Department.

We can't have situations arise in the future where witnesses come before Committees of Congress and are anything less than fully accurate, candid, and responsive to questions that they are asked, and not just on one occasion, but on multiple occasions.

I don't just reach back in distant time in that regard in making that point, but I mean up to the present time and looking forward.

I think in our kind of system there are going to be differences of opinion, political clashes, and all kinds of things. But, in order for the system to work, there has to be a fundamental respect for balance of power and the division between the branches and the need for honest and forthright information to go back and forth.

Sometimes that may be embarrassing and sometimes it may cause tension and difficulty, but the system can't work on any other basis. In a free, open, democratic system, straightforward and complete information is absolutely essential. If you don't have that, the system can't work properly.

The whole reason that precipitated the central part of the investigation that we've been ordered by the Senate to do on behalf of the Senate, was triggered by that problem. We can't have that.

You've been very forthcoming in sending us witnesses and documents, and I think the word needs to go out and there needs to be these intermittent reminders that there's an obligation to be very careful in terms of being sure that facts are full, complete, and presented in a timely manner.

I would ask you to see that that message is disseminated to each and every nook and cranny of the Executive Branch of Government.

Mr. CUTLER. I will try to do that, Mr. Chairman. I would point out that the President said, in his press conference earlier this week, "I would like to emphasize, first of all, I do not countenance anybody being less than forthright with the Congress." And we will see that that is done.



The CHAIRMAN. I might also say, just parenthetically and as an aside, while we've been engaged here in long hours of hearings, which have been very taxing on witnesses, Members, and others, that the Committee has been at work on other matters.

I want to just say to my colleagues, I appreciate the efforts by all to keep our normal legislative agenda moving. We have been able to enact, or are very close to finishing the enactment process of a major interstate banking bill and also a bill on community development banks and securitization of small business loans, a matter of great interest to and leadership by the Senator from New York.

So we have managed, even during this very difficult week, to be able to move our legislative agenda ahead, unrelated to these matters, and that's greatly to the credit of all Members on both sides of the aisle and the staff itself.

Excuse me for injecting that, but I wanted to say it so that it was well understood.

I'm interested in any specific recommendations you have for us now in terms of how we implement the statement of purpose that you've laid out here in terms of changes in rules, procedures, and practices that can give us a better system in the future and avoid and prevent some of these troubling circumstances that took place here.

What specific recommendations can you give us today that would fill this out a bit?

Mr. CUTLER. I think the job of devising tighter rules and a more closely controlled system for handling heads-up and other information relating to law enforcement activities is essentially our job. That is, the Executive Branch's job, in the first instance, although we would appreciate, of course, your oversight role and we would be glad to show you, from time to time, and discuss with you what it is we plan to do to tighten our own procedures.

I have outlined three steps that we intend to take and then I would draw attention to the Vacancy Act, which is Congress' job to look at and repair if it thinks necessary. That is something that we cannot do by ourselves.

The CHAIRMAN. I'm prepared, within the scope of this Committee, to undertake any legislative changes that, properly, we would need to initiate.

But, by the same token, we will help draft legislation that may go to another Committee that arises from the defects in the system or bad practice that was in place here and reflected in these case facts.

I'd like to move quickly on this on both fronts. In other words, I don't want to let the clock run and then find out that we've got another problem that crops up because we weren't timely in our response. I know you don't want one, either, and you're not going to be in that job forever.

Mr. CUTLER. I was about to say, Mr. Chairman, my clock runs on September 30, and I intend to get it done before then.

The CHAIRMAN. Mine runs on January 4 of next year, so it doesn't run much longer than yours. And so, I want to make sure that we've really got the wheels turning quickly.

I would hope that before you leave, the changes in administrative practice that have to be accomplished and that can be accomplished, either by Executive Order or by whatever change in administrative procedure, will be accomplished so that you can report to us. And I would ask you to report to us, before you leave, as to the status of that, whether it's been done, whether the promise in that sense has been kept, and if there's anything that's still in abeyance. I think we need to know that so that we can give a push to it to see that it's done, because we don't have the time to go through these kinds of distractions. The country is not well-served by it, and we want to prevent it from happening again.

Mr. CUTLER. Your request will help me push things along.

The CHAIRMAN. Thank you.

Senator D'AMATO. Excuse me, Mr. Chairman.

The CHAIRMAN. Let me recognize Senator D'Amato.

#### OPENING STATEMENT OF SENATOR ALFONSE M. D'AMATO

Senator D'AMATO. Mr. Chairman, Mr. Cutler, I was caucusing with several of the Members of our Committee. I'll be very candid with you. I've spoken to Democrats and Republicans as to how we could make our points, make our views known, but do it in a manner which will give everyone an opportunity to raise those questions that he or she feels is necessary, but attempt to avoid keeping us until 2 a.m. I would hope that we could do that.

Mr. CUTLER. I would like to get to Long Island tonight, Senator D'Amato.

[Laughter.]

Senator D'AMATO. So that was the nature of our conversations. I think we're making some progress and I think both sides share that view.

Senator SARBANES. Anything we can do to allow those conversations to continue, we'd be happy to do as we move toward that objective.

[Laughter.]

Senator D'AMATO. Mr. Chairman, Members of the Committee, Mr. Cutler, this has not been an easy task. An investigative committee, by its nature, when it is taking testimony from various parties, have honest disagreements. People can see things from a different perspective, and sometimes there are real divergences of fact.

What we're trying to do is to get the facts and ascertain what did happen.

I note, with interest, that the Office of Government Ethics, in its report, takes a position and disavows, and I look to page 2 because I was, until last evening, or might I say, late in the morning or sometime in the morning, about 12:30 or 1 a.m., I read on page 2, in the middle of the second paragraph, it says: "For that reason, our analysis"—this is the Office of Government Ethics. It says—"Our analysis is not intended to cover, nor should it in any way reflect upon the actions of individuals who are employed by the White House."

Now, the reason I mention that is because it has been waved around by every Member and by just about every witness who had

occasion, some who were in the White House, as the report that was the clear-all.

I also note that you refer to an informal concurrence. What is that informal concurrence?

Mr. CUTLER. May I explain that, Senator D'Amato?

Senator D'AMATO. Please.

Mr. CUTLER. You are aware of the deadlines under which the Treasury and the White House and the Office of Government Ethics were working.

We could not begin our fact-finding until Mr. Fiske informed us that he had concluded his investigation on the subject of the contacts. All of us got that clearance about the first of July.

The first hearing was scheduled for the House on July 26, and your Senate hearing was scheduled, originally, I think, for July 29.

The Treasury, the Secretary of the Treasury had requested the Office of Government Ethics at the very beginning, shortly after the business about the contacts became public, to make an inquiry and report to him.

The Office of Government Ethics has no fact-finding capability. It passes and interprets the standards of Government ethics on the basis of facts supplied by someone else.

It was arranged with the Office of Government Ethics that the Treasury and RTC Inspectors General would do their fact-finding report and submit that to the Office of Government Ethics, and they did this under great pressure.

Meanwhile, we were doing a fact-finding report within the White House. The Office of Government Ethics didn't have time, at the time these hearings began, to give us the same detailed formal opinion that they were able to give to the Treasury about the Treasury officials.

We gave them a draft of my factual statement, which was attached to my House statement, and they went over that and they went over my actual statement, itself, and approved the words used in that statement about informally concurring.

I hope, now that more time has gone on, it may be possible to get a more formal expression of views from them.

Senator D'AMATO. I'm not going to press that. But, again, I think it's important that we understand because too many would be ready to use this as a blanket of almost approving of their conduct.

I would note that in your report, in fairness, that you have, yourself, pointed out a number of contacts that those in the White House, in the real world, shouldn't have had. They may not have broken the law, but they were certainly injudicious, not wise.

Certainly, at the very least, it created some of the turmoil.

There's another basic problem I see, and I don't know how it's resolved, but we'll look at it at a later time. I think some of the people here, probably on both sides, have to raise this as a legitimate question.

Let me first say that the President is very fortunate to have such a distinguished and able advocate. And I'm not blowing smoke because I'm not one of the Washington insiders.

I don't know how long it will take. I'll probably never be. But you are. And you are because you are a man of keen intellect, ability,

and wisdom. You're a terrific advocate, but you're an advocate for the President in his official capacity.

As such, your office has represented the White House in these hearings. And I have no doubt about your integrity. But, how does anyone—put aside Lloyd Cutler—how does anyone who is an advocate on behalf of the White House then claim, at the same time, that they can be dispassionate in judging the facts as it relates to conduct taking place in the White House?

It leaves this Senator somewhat troubled. When we talk about who should be making this judgment, should it be—shall we place you in that uncomfortable position?

By the way, I was troubled about Roger Altman's— and I made statements on the floor—about the precarious position he was placed in. Long before we began, I said, how can you be placed in this untenable position?

So, anyway, do you believe that you can be both an advocate—put Lloyd Cutler aside—that anyone can be both an advocate, on one hand, and a judge on the same matter? That's somewhat perplexing to me.

Mr. CUTLER. Senator, I appreciate your having to discount anything I say or any facts I find by the fact that I am now the White House Counsel.

Senator D'AMATO. I do not do that. Let me say this to you. I want you to understand.

I do not discount any of the facts that you find. I want you to understand that. But I just say that this, for me, raises some questions. I do not equate any of your actions with the actions I have attributed publicly, or inaction as it relates to Mr. Altman.

But, I see a parallel and it's troubling. How can someone, on one hand, be the person to be an advocate, and on the other, be judge of the same matter?

Mr. CUTLER. You are the ultimate judges as to the accuracy, fairness, and thoroughness of what I report.

Let me say, while I appreciate your having to discount that I am the White House Counsel, I am not an FOB. I admire this President. I like him even more, now that I know him better. But I'm not an FOB.

There isn't any job I want. I wasn't bucking for this job. It's too late for me to go on the Supreme Court, be the Attorney General, be the Chief of Staff, or any of those things.

As much as I've enjoyed this, I can't wait to get out of there on September 30.

[Laughter.]

You have to be the judge. The only other solution is a totally impractical solution. This is not a legislative suggestion, Mr. Chairman.

We don't have an Inspector General in the White House. I don't see how you could create anything like an Inspector General in the White House. The closest you can come to that is the White House Counsel. And it's the job of the President to pick the best, most trustworthy, generally respected, and objective White House Counsel he can.

I assure you that when I leave somebody better than I am is going to take my place.

Senator D'AMATO. Mr. Chairman, the light is on and I know others want to make their observations.

The CHAIRMAN. Thank you, Senator D'Amato.  
Senator Sarbanes.

#### OPENING STATEMENT OF SENATOR PAUL S. SARBANES

Senator SARBANES. Thank you very much, Mr. Chairman.

Mr. Chairman, first I want to very strongly commend you and Senator D'Amato for these hearings. I think they have been conducted in a very fair, thorough, and comprehensive manner. I think that the two of you working together have essentially made that possible, along with the very able work of the two Counsels, Mr. Codinha and Mr. Chertoff.

I simply want to make that very clear at the outset. I think it's made a very significant difference, that cooperation, positive, constructive cooperation, in the workings of this Committee and in our ability to do the job that we were charged with by the full Senate.

The CHAIRMAN. Thank you.

Senator SARBANES. Mr. Cutler, I, at the outset, want to take just a moment or two to outline some of the points that were made in your statement before I direct some questions to you.

I served on the House Judiciary Committee when we did the impeachment inquiry, and on the Iran-Contra Committee, when that hearing was held in the Senate.

I think, given that prior experience, it's very important to emphasize a couple of the points in your statement.

First of all, is the extent of Executive Branch cooperation in this inquiry. Unlike those other instances in which, in effect, Congress was denied access to material and access to witnesses, to the best of my knowledge, the Executive Branch has been completely forthcoming, in this case, in providing material and testimony from its officials to the Committee and to Congress.

I know you and others played a part in that. I know the President, himself, has consistently stated his very strong commitment to do that. I think it's been carried through and that's very important. I think it has established, hopefully, a precedent which will be held to in the future and certainly serves as a significant counterprecedent to the prior experience in those other two inquiries.

I also think it's important, since occasionally in media discussion they try to analogize these inquiries, to point out that in this instance, our hearings have shown, and the various investigations have shown, that there were, as Mr. Fiske says, no breaking of the law, no illegality, and as your report and the OGE report have indicated, no violation of ethical standards.

So there's no illegality and no unethical conduct. Now, of course, that's in marked contrast with what we found in those other inquiries. Very, very marked contrast. I think it's essential that that be kept in mind. There's a tendency, because the setting is somewhat similar, in other words, a large hearing room, a lot of television, many Members here at the podium, people standing and being sworn in, extended questioning late into the day, and so forth, to think, well, it's all part of the same pattern. That's clearly not the case, clearly not the case.

In this instance, there's been no illegality and no unethical conduct. I simply underscore that very strongly.

Now, as you have pointed out, there's been no action that was taken that would have stopped or slowed the criminal or civil proceedings involving Madison Guaranty.

Having said all of that, of course, illegal and unethical conduct is not the end of it. Someone can behave legally and someone can behave ethically and still not reach the proper standard of behavior. They may have very bad judgment. The procedures may be faulty, as you have indicated in your statement. So, we obviously need to examine these matters.

People every day are not kept on in positions because they didn't do anything illegal. They didn't do anything unethical. They just didn't meet the standard which you referred to at some point, a standard of performance, I think you called it—we did not meet as high a performance standard as we should have set for ourselves—is what you say in your statement at the bottom of page 3 and the top of page 4.

I welcome the recommendations you have made to try to address some of these problems. I think they're very practical. They're very realistic. I think it's very important not to adopt solutions which cannot withstand the practical workings of matters.

There's one thing I'd like to draw you out a little further on.

We had an extended exchange here last night with your predecessor in the Counsel's Office about the recusal issue and a proper policy for Federal officials to follow when deciding to recuse themselves.

Now, in this instance, of course, we had a situation in which, both legally and ethically, it was said that recusal was not necessary. You've said in your statement, well, it should have been done and you then said, it's much more a political judgment in reaching that conclusion.

That raises the fact that, in articulating an appropriate standard in this area, it makes it extremely difficult. In other words, you can do a legal analysis and you can do an ethical analysis according to the rules. You've said, well, here, having passed muster on both of those, there still should have been a recusal. And you say, well, that's more a political judgment. I wondered if you have any thoughts on what that standard is to guide people.

Mr. CUTLER. Yes, Senator Sarbanes. I guess it's a seat-of-the-pants instinct borne out of experience. A man whom I've admired a great deal, who got into trouble himself in his 80's, used to say that when you come to an ethical question, don't stop with reading the criminal code or the standards of ethical conduct. Ask yourself how you would like to read about it on the front page of The New York Times or The Washington Post or see it on "60 Minutes."

We're all speaking now with hindsight, and we all have marvelous 20/20 hindsight. None of us had to make the call that Mr. Nussbaum, Mr. Altman, and the others had to make in February.

But, it seems pretty clear to me that, if a question of recusal comes up, and I'm speaking now of the Executive Branch and people who can be thought of as fairly close to the White House—I'm not speaking of judges. If the question comes up, should you recuse yourself, in Washington, DC, you're probably better off recusing.

We can talk about this duty to serve. But what was the importance, in the end, of Mr. Altman's duty to serve? It didn't matter, as we know from the testimony. He wasn't going to step into what was happening, anyway. It was totally a matter of appearances.

And, I must say, it is hindsight. Just reflect on how this entire storm blew up, because when the oversight hearing occurred and Mr. Altman reported the meeting and the material he did report on, on February 24, there was a great firestorm.

If he were gone, if he had stepped out of the RTC job by that time, we wouldn't be sitting here today. That's why I say it's 20/20 hindsight.

Kermit Gordon, who was the Chairman of President Johnson's Council of Economic Advisers, and who later became the President of Brookings, loved to tease all the macroeconomists like Arthur Okun and Charlie Schultze and the others, because, while they could always explain what had happened and why it happened or why it shouldn't have happened, they were often so wrong in predicting the future.

Finally, Kermit found a little clipping in an English country newspaper which said that last Wednesday's meeting of the South Sussex Soothsayers' Society had to be postponed because of unforeseen conditions.

[Laughter.]

The people who made this judgment were making judgments very rapidly. You always have to do that in the White House. It's an experience—you up here, especially in your oversight hearings, you always have hindsight. But, when you're making quick judgment calls, 10, 20, or 30 of them a day, you can understand why people do these things in perfect good faith, but it's only experience, in the end, that will help you avoid them.

Senator SARBANES. Thank you very much.

The CHAIRMAN. Thank you very much.

Senator Bond.

#### **OPENING STATEMENT OF SENATOR CHRISTOPHER S. BOND**

Senator BOND. Thank you very much, Mr. Chairman.

Mr. Cutler, today marks the end of the first phase of the Senate's Whitewater hearings, some would say, blessedly. But I believe that with the seriousness of the Chairman, the diligence and perseverance of the Members of the Committee, and I particularly commend my colleagues on the other side, that people who criticized us for having these hearings have been rebutted.

Mr. Chairman, you have done a very professional job. There are some areas in which we may disagree, but I don't think anybody can say that we have not had an opportunity to pursue the investigation, to ask our questions.

In many instances, you and Senator Sarbanes, Senator Boxer, Senator Dodd, and Senator Shelby, have made points that were as good as could be made. I think, from the reaction we're getting in our office, that people have learned a great deal from these hearings. So the time and effort was worth it.

We've heard many times about, and discussed the need for open Government, for the need to restore the faith of the American peo-

ple in Government, and for the need to make public service something that the so-called best and brightest will seek out.

Now, over the past week, we've seen a number of public servants, some career, some in their first Government job. As a rule, I'd have to say that these were very impressive people. They were dedicated to what they perceived their job to be and whose credentials or ethics cannot be challenged.

There were some people who came before us who really are the best examples of Government servants.

In other instances, we saw a second phenomenon at work with a few people. The blurring of the lines between public responsibility of their positions and their private commitment to protect the President, sometimes at all costs.

I'm afraid this was a tone that was set at the top, that in some cases, ends do justify the means, that somehow, the public is best served if the President's interests are served, whether those interests be his private interests, his political interests, or the interests of the Office of the Presidency.

It is this ethical blurring, coupled with a set of standards that seem to imply if you are not indicted, you are fit to serve, that has put some officials, both current and departed, on the hot seat this week.

That, once again, leads us back to the question of why. Why have sincere people cut corners, shaded the truth, evaded responsibility, and occasionally, I must say, lied to Congress? What does the clear pattern of tip-offs and heads-up mean?

We now know that on Tuesday, March 23, Roger Altman was made aware of the first criminal referral affecting the President. If I had been in Mr. Altman's position, had strongly supported the man for the Presidency, was the second-ranking official in the Treasury Department, and I had that information brought to my attention, I think that would burn into me like a hot branding iron. I don't think I would ever forget that moment. That would be a watershed event.

Within hours, background articles linking Madison Guaranty and the Clintons were faxed to Mr. Nussbaum at the White House. Mr. Altman has no memory of it.

We know that in late September of 1993, information on a second set of criminal referrals, nine new charges, was passed on to Mr. Altman. Within days, Jean Hanson, his top lawyer, was at the White House passing on that information.

We know the White House, in preparing Mr. Altman for his testimony before Congress, had all those items listed, criminal referrals, and what happened, set out. To say that he didn't know about that and had forgotten about that when he came before this Committee stretches credibility.

We now know that, within days of receiving the confidential material, the White House staff discussed it with an outside attorney who had been the Mr. Fixit. During the campaign, they told the President that his 1984 gubernatorial campaign was a target of the investigation.

A series of meetings were then held at the White House, but at no time did the White House Counsel set any rules for the staff on



what they could do with the information, nor direct them to keep it confidential.

As a matter of fact, when I asked the former Counsel last night, what advice he gave when he and his White House colleagues received that significant, nonpublic information relating to criminal referrals involving the President and his close associates, I said, what did you advise them? He said, prepare for press leaks.

Now, nobody can tell us that evidence did not disappear. That's the reason that criminal referrals are kept confidential, so evidence doesn't disappear. Unfortunately, last night, the witness used the term, there's not a shred of evidence that anything went wrong. Unfortunately, that choice of words was a bad one.

I do not see the Office of Government Ethics having absolved White House officials on these questions.

In November, after Congress extended the statute of limitations, against Mr. Altman's recommendation, a potential civil case involving the Clintons was brought back into play.

In January and early February, the White House began focusing on what was going on to make decisions about the civil case. This led to a series of inappropriate meetings. The focus of these meetings was to keep Mr. Altman in charge as the White House did not want to be unprotected.

Mr. Altman's initial instincts were right. He should have recused himself early on. And, I would have to say, in my view, and I respectfully disagree with Mr. Cutler, it was not just a matter of appearances. The White House was worried that an unfair, tough lawyer would make the decisions affecting the President.

At the hearings on February 24, there were a few simple questions, and then half-truths, partial truths, nondenial denials, word games, omissions of facts, and more retractions than I've been able to keep up with.

It leads me back to the explanation for why the President received information not available to anyone else in the country.

The White House, to this day, maintains there is a legitimate Government interest in having confidential information about criminal referrals affecting the President, transmitted to the President and his people.

The remarkable thing is, every time I've asked about it, they have been unable to say why. The Wall Street Journal editorial, we mentioned it today, says that the hearings have revealed a political mindset of conceal and evade, a pattern of behavior that goes to the heart of public confidence. And, they and I would say, more hearings are needed.

What went on in Little Rock in the 1980's; in the office of Mr. Foster on the night of July 20; and in the Department of Justice after they received the referrals?

The President is not above the law. Mr. Cutler, several days before you received this appointment, we were in a bipartisan gathering when everybody said you ought to take this job. They said it in a manner friendly to you. I don't think they realized, at the time, that they were asking you to take on one of the largest tasks since Hercules was assigned to clean out the Aegean stables.

We wish you well in it. We think the time has come to establish new standards. Certainly on this Committee, we look forward to

working with you, and with Members on both sides of the aisle, to help restore the confidence that the White House must have.

Mr. CUTLER. May I respond?

Senator SARBANES [presiding]. Mr. Cutler, before I recognize Senator Dodd, who is next to speak, I'll give you the opportunity to respond to any of the comments that Senator Bond made.

Mr. CUTLER. I remember that gathering, Senator Bond. I thought I was here in an oversight Committee where Senators were going to judge the facts objectively.

What you just said sounded to me like the script for "The Pelican Brief." People in the White House are crooked, and can't be trusted. Everything they did was wrong. It doesn't sound to me like you will judge fairly. You've already judged. I can see that and I'm sorry for that.

You refer to these fine, decent people who were here. These are White House people. They work very hard. They're dedicated to their jobs. They're honest people. Even honest people can make a few mistakes. Every one of these people you've had up here, 10 or 12 White House officials, goodness knows how many Treasury officials, has had to hire a private lawyer. No one is paying them for those private lawyers.

You talk about attracting fine, upstanding people to Government. Who is going to serve in Government if you describe serving in Government the way you do?

You come from a party which, while it held the White House, was responsible for Watergate and for Iran-Contra, where, incidentally, Mr. Meese, as soon as he found out during his investigation that Colonel North was saying that he had the authority of the President, went immediately to the President, who was clearly involved, and the President's Chief of Staff, to tell him that.

All I can say, Senator Bond, is I am very surprised and disappointed by your statement.

Senator BOND. Mr. Chairman, may I answer that?

Senator DODD. May I be heard? Mr. Chairman, we've got to go down the line here. We've got to try to finish up.

Senator BOND. I just want to make one comment. Now that—

The CHAIRMAN. I beg your pardon. I was out of the room, having to take a phone call, and so I did not hear what preceded. I've heard the last 30 seconds. Senator Bond has asked for an opportunity to make a final comment.

Senator DODD. I know. But if he responds, we'll be here all day.

Senator SARBANES. That's all right.

The CHAIRMAN. Senator Bond.

Senator BOND. Mr. Chairman, the witness has said that I have unfairly judged these people.

We have had a week of testimony. We have read the depositions. That is the purpose of this job.

Now, Mr. Cutler, I'm not going to impugn your integrity. You have tried to throw a bucket of Watergate on top of me. I have said they're fine people. I have expressed confidence that you can clean out the stables in the White House.

But, if your approach to cleaning this out is going to be to reinstate political attack instead of dealing with the problems, then

we're not going to get anywhere and I am disappointed, very disappointed, sir, in your response.

The CHAIRMAN. Senator Dodd.

#### OPENING STATEMENT OF SENATOR CHRISTOPHER J. DODD

Senator DODD. Thank you, Mr. Chairman.

First of all, Mr. Chairman, let me pick up on the comments of Senator Sarbanes. It is never an easy job to chair any hearing. But, to chair a hearing that brings with it the very nature of controversy and tension is a difficult one.

I just want to take a moment to commend you for your fairness and your thoroughness during these past 70 hours, over 6 days and 25 witnesses before this Committee. It's a tough piece of work and, in my view, you've done a very, very fine job.

The CHAIRMAN. Thank you very much.

Senator DODD. It ought to be reflected. Let me say, as well, to my colleagues here, we have our disagreements. We express ourselves. We also work every day. The very people I'll sit in this room and argue with, vehemently, I'll also be joining as a cosponsor with on an amendment 5 minutes later on the floor of the United States Senate.

Now, that may not be well understood by the general public, but we're a small group of people. We have to work with one another. We have our disagreements and our fights, but, by and large, I'm deeply impressed with my colleagues here, and their efforts over these past 6 days in this matter.

Let me just reiterate, Mr. Chairman, what I said about a week ago when this all started, about dealing with the basic three questions. The statutory environment which created this situation, I thought, was an invitation to trouble. I think those sentiments have been repeated over and over again during the week. We heard Mr. Cutler this morning eloquently address that issue and make suggestions on how we might correct it.

Second, with regard to, from this Senator's standpoint anyway, the written responses to supplement the testimony of February 24, I thought it should have been handled in a much better fashion and manner and is, in many ways, inexcusable.

Third, with regard to the contacts, I would endorse the language used by Mr. Cutler. There were just too many meetings, too many people, on too sensitive subjects.

I'd add a fourth—too many inexperienced people dealing with these matters.

IQ's and intelligence are very important factors to bring to Government. But a few gray hairs and some callouses are also a nice addition to that decisionmaking process. I add that as a fourth element.

Having said that, let me also point out that I think we've heard some very fine people in this past week. The attention will no doubt focus on those who are most in controversy. The media has a tendency, for obvious reasons, to report about planes that don't fly. But there are a lot of people who do good work every single day to try to make this a better, a stronger, and a healthier Nation.

From Ms. Kulka, to Mr. Ryan, to the men and women who are part of the Legal Counsel's Office and the White House staff, I

think, by and large, and people can express themselves individually, I think we were impressed. People, frankly, that I didn't even know, didn't know their names before, I think, comported themselves well. I think many people, regardless of political party and persuasion, can be impressed that some very fine people are working in our Department of Treasury and the Resolution Trust Corporation and in the White House. I think the President deserves credit for that.

If he's going to assume the responsibility for things that go wrong, then I think he also deserves credit when fine people come forward. I didn't want this moment to pass without expressing that view.

Now, Mr. Chairman, the temptation here today is to jump to some quick conclusions. We've been through a lot over the last 6 days. I'm tired. And when I'm tired, I don't make as good decisions as I do when I have some time to think about things.

I hope we'd all spend a little time thinking about some things over the weekend, and maybe next week. To consume 70 hours of testimony in 6 days with 25 witnesses, with ethics reports, Independent Counselors' reports, and so forth, is an awful lot.

So, while the temptation may be to draw some very hard, definitive conclusions, maybe I'll be alone in this, but this Senator intends to spend a little time to think about it. I'm going to try to get home to Connecticut, some safe ground, and listen to some people who don't have any particular axe to grind and hear what they think after having listened to a good part of this. That's where I stand this morning.

I also want to say, Mr. Chairman, that I agree with Senator Sarbanes. I think, at least on the threshold questions of whether or not Mr. Fiske was correct in his judgment about illegality, on the two questions we were asked to look at, not three, but just two—that is, the Park Police's handling of the investigation of the Foster death, and on the contacts issue—I believe the Park Police did a very fine job. I also believe that on the contacts issue, the standard of criminality has not been met.

I would also say that I'm satisfied that the standard of a collection of ethical standards, as written out, has been met. But, I'd come back quickly to the point that I made at the outset. That does not meet the standard of impropriety, bad judgment, sloppiness, or inexcusable behavior. That's a different standard. I don't think that one was met, to be quite candid with you. I want to think about that in terms of what it means and the various issues that have been affected.

I hope my colleagues might join me in that before we rush to judgment. I think we ought to be careful about that.

Having said all of that, now let me ask you a question.

We heard from Mr. Nussbaum last night. He's a very appealing individual. I had never met him before, but he's obviously engaging. He's got a wonderful vitality and energy to him.

I'm struck this morning with your presence here, having assumed the responsibility of Counsel to the President, and that's the title.

If I were going to hire a lawyer to represent myself tomorrow in court, with all due respect, Mr. Cutler, I think I might take Bernie.

Mr. CUTLER. So would I.

[Laughter.]

Senator DODD. But, if I wanted a lawyer to represent the Presidency, I think I might take you. I'd like you to spend a couple of minutes and draw a distinction because I think that's maybe where we got ourselves into some difficulty here. There's a distinction between being Counsel to the President and Counsel to the Presidency.

In my view, there's a significant distinction in what those two clauses mean, and I wonder if you agree. And if not, why not?

Mr. CUTLER. I most certainly agree, Senator Dodd. Let me first say, I admire Bernie Nussbaum in the same way you do. He's a man of remarkable talents, enthusiasm, warmth, and just a great human being and a great lawyer in every way.

I think, though, that the role of White House Counsel, it's more than having a personal client. It is having an institution as your client, in a sense; namely, the Presidency. I think Bernie demonstrated last night how much he appreciates, as well, that your client, in a sense, is the institution.

It requires having some sense of when the Presidency, as such, should be defended. I staunchly defend the right of the President to receive this heads-up, about which I wrote that op-ed piece, with which I know many of you here on the Committee disagree, or at least have great doubts about because of your concern that a heads-up can be misused.

Senator DODD. I strongly agree with you, by the way, on that point.

Mr. CUTLER. I'm glad I have one vote at least on that.

[Laughter.]

You have to be able—in addition to defending the position of the Presidency, you have to have a sense of whether, although you possess executive privilege, although we could have kept these witnesses from coming, although we could have held back many of the documents we've turned over, how many times have any of you before seen lawyers' notes from the White House Counsel's Office, memoranda to the President, intimate discussions of the kind that the President normally is entitled to keep private, especially from the other branch, the congressional branch.

You remember the Senate Watergate Committee, and I'm not drawing any inferences, Senator Bond. The Senate Watergate Committee was not allowed to get the very same tapes which Judge Sirica and the Grand Jury were allowed to have.

We have turned all of that over. That's what I mean by being Counsel to the Presidency. It wasn't necessarily helpful, although I think in the end it will be, to President Clinton's personal interests, that all of these intimate details of advice to him and what he said in response, are made available to you. But, it is important in the interest of the Presidency, if your conduct is challenged on legal or ethical grounds, to make a full disclosure of everything that's happening. And that's what we have been trying to do. I think that illustrates, perhaps, what you're asking about.

Senator DODD. Mr. Chairman, could I just take 30 seconds to add something that I omitted to say.

I have a lot of friends in the United States Senate, and good friends. I guess it's maybe a reflection of what the place is like. Some of the people you're closest to, you fight with a lot.

He's not only my neighbor geographically, but Al D'Amato is also one of my very best friends here. We've had our disagreements over the last week or so. But, I wanted to reflect as well, my admiration for him, despite our disagreements.

Let me just say as well, Mr. Chairman, I apologize to you, but a reflection of what the place is like, there's now an amendment on the floor dealing with Haiti. I share a responsibility, dealing with the Subcommittee on the Western Hemisphere of the Foreign Relations Committee, and I'm going to have to be excused to go over and engage in that debate.

So, I apologize to you and my colleagues and to you, Mr. Cutler, for leaving. But, I just wanted to make that note, if I could, Mr. Chairman.

Senator D'AMATO. Mr. Chairman, at this time, I'd like to thank my friend and colleague, Senator Dodd, because we do get testy at times with one another. But it's not on a personal basis.

I think we all have a tendency, some of us a little more than others, to express our views sometimes with force, conviction, and some passion. We hope some logic as well.

I thank my good friend.

The CHAIRMAN. Senator Mack.

Mr. CUTLER. Mr. Chairman, let me apologize at this point to Senator Bond, but I thought I was under a political attack.

The CHAIRMAN. The apology is noted. Senator Mack.

#### OPENING STATEMENT OF SENATOR CONNIE MACK

Senator MACK. Thank you, Mr. Chairman. And welcome, Mr. Cutler.

I think I'll pick up on one of the reasons you stated as a basis for needing a "heads-up," or at least looking at the information, and that was to keep the President from having embarrassing contacts.

First, if I'm not mistaken, you had to amend one of your earlier statements indicating that no one in the White House was aware of the referrals. I think that took place—I don't have the date, but there is an article, I guess by Susan Schmidt, where it says, Mr. Cutler has justified attempts by the White House Counsel to get information about the Whitewater investigation, in part, so it would be able to protect the President from any embarrassing or compromising encounters with those targeted in the probe.

I think when most people saw that, they really figured, well, maybe Mr. Sloan was the only one who was privy to that information. But, clearly, in the testimony that we have heard during this past week, we now know it was Mr. Sloan, Mr. Nussbaum, Mr. Eggleston, and, in my opinion, it appears likely that Mr. Lindsey had that information as well.

I first want to see if you agree with what Mr. Nussbaum told us. I think I know the answer to it, but I want to hear it, anyway. I suspect you would disagree with what Mr. Nussbaum said last night. Or are you unfamiliar with what he—

Mr. CUTLER. I'm not sure I heard it. I stuck here for a while.

Senator MACK. Yes. I think you had gone.

Mr. CUTLER. I'm not sure I heard this, Senator.

Senator MACK. He didn't see anything wrong with the President meeting with Governor Jim Guy Tucker, even with so many people in the White House having information about the referrals and even though those people knew that the Governor had been named in those referrals.

Mr. CUTLER. Yes. May I respond to you?

Senator MACK. Sure.

Mr. CUTLER. First, Mr. Lindsey testified at length about this. Mr. Sloan, as you know, agrees with Mr. Lindsey's interpretation of his own notes.

It's quite true, as you said, that Mr. Sloan knew by the first few days of October, perhaps even on September 30, from Ms. Hanson that Governor Jim Guy Tucker had been mentioned in some way in one of the referrals.

Mr. Lindsey did not know that, he believes, until the 7th, which was the day after the meeting with Jim Guy Tucker.

Senator MACK. I understand that that's still open for debate.

Mr. CUTLER. Right.

Senator MACK. But certainly, the other three individuals did.

Mr. CUTLER. The others knew, but they probably didn't know about the President's schedule.

We submitted a letter to the House Committee on this subject. I think you already have it here.

Senator MACK. Could I just ask you a question again?

Mr. CUTLER. Yes.

Senator MACK. If the primary purpose of having the information on the referrals was to keep the President from embarrassing contacts, why wouldn't the people who had this information make sure he didn't have such meetings? If the purpose is to affect contacts, why wouldn't they have some input, then, into the scheduling process?

Mr. CUTLER. I think that's a fair question, Senator Mack. Should it have been communicated earlier so that—and should the White House Counsel's Office have been aware, before the meeting with Jim Guy Tucker was set up, that there had been a request for such a meeting? I think that's a fair question.

But, either by luck or otherwise, the matter ended up being handled, I think, in a totally sensible, noncriticizable way.

Governor Tucker was up here to meet the Arkansas congressional delegation. He was indeed the Governor of the State of Arkansas, and he asked to see the President. He wanted to see the President about a number of Arkansas things—getting more helicopters for the National Guard, having one of these defense accounting centers, which were then being allotted around the country, assigned to Arkansas, which, incidentally, he didn't get in the end. And, he asked for this meeting. My letter of July 27, to Mr. Gonzalez, explains the circumstances.

The meeting was attended, throughout, by one of the White House liaison people with the States, a man named Keith Mason, I believe. Mr. Mason was there throughout the meeting. The only subjects discussed at the meeting, and he kept careful notes, which

I have examined, were these Arkansas political subjects, requests for various kinds of assistance from the Federal Government.

I have looked at Mr. Mason's notes and I'm perfectly satisfied that, no, there was no conversation about referrals. In fact, I don't think the President knew of any referral relating to Jim Guy Tucker at the time. But, if he had known, it might well be appropriate, still, to see the Governor of Arkansas, your own State, when he's coming up here to see the State delegation and he has a few requests to the Administration, but to be careful to have somebody else present to be sure there was no sidebar conversation about the criminal referral.

By luck, as I said, even though they didn't know that, they did have somebody present throughout the meeting, and this letter, Mr. Chairman, makes all the facts clear.

The CHAIRMAN. We'll make it a part of the record if it's not been added previously.

Senator MACK. I appreciate your comment on that, Mr. Cutler. And let me just—this is a personal opinion now and not any indictment.

Mr. CUTLER. Yes, sir.

Senator MACK. With Nussbaum, Sloan, and Eggleston having this information, and hearing the impassioned presentation last night of Mr. Nussbaum on the need to protect the President, and coupling that with his comment with respect to him not really seeing anything wrong with the meeting, it leads me to the conclusion that Nussbaum probably told the President about those referrals and the information related to it. As I say, that's my opinion and we'll let it go at that.

I just have one last point to raise. I think most people on this Committee believe that the evidence is overwhelming that Roger Altman testified falsely to this Committee and continued to do so through a series of letters to the Committee. Most of us have seen support for that conclusion from Mr. Podesta and Mr. Klein's statements that Mr. Altman testified falsely. Contemporaneous notes prepared by the White House staff, I think, basically back the conclusion up as well.

Now, I'd like to know what you think is the most effective action that the President could take to send to Members of his Administration that false testimony will not be tolerated?

Mr. CUTLER. First, he has said, expressly, that he wants everyone—he will not countenance anyone being less than forthright with the Congress.

In Mr. Altman's case, of course Mr. Altman's testimony was not a part of what I've been looking into, but I'm quite familiar with the four letters and everything else you've stated.

I agree, as Mr. Podesta said, that regardless of what he knew or remembered at the time of his original testimony, the supplemental information should have been furnished more promptly and more fully.

I think he has agreed with that himself. I remember hearing at 1:30 a.m., he showed a great deal of contrition about it and what a mistake he had made. He did the same thing on the House side. He's suffered enormously for that.



There were some extenuating circumstances, one of which I'd like to call attention to. I don't know whether it's been referred to in the testimony or not. The testimony was on the 24th, I believe. The first letter was written on March 1.

Within a few days after that, as you remember, there was an enormous furor, even about what he testified to. Within a few days, Mr. Fiske served subpoenas on everyone concerned in all of these contacts. I think the subpoenas were served as early as March 3.

At that point, further pressure or contact by the White House, correct your testimony, et cetera, became virtually impossible. Everyone in the White House who received a subpoena, and Mr. Altman and the others in the Treasury, were busy hiring lawyers. Mr. Altman retained Richard Beattie of Simpson, Thatcher in New York, a very fine lawyer. They were busy consulting their lawyers, bringing them up to speed, so that they could prepare to submit documents and testify before the Grand Jury for the next several days—next several weeks, I really mean.

That may explain, in part, why it took Mr. Altman so long to get out that series of letters which, I think, in the end, contained all or most of the essential information.

The President feels, and Secretary Bentsen feels, and it seems to me how Secretary Bentsen feels is very important, that Mr. Altman has been an excellent Deputy Secretary of the Treasury. He's not perfect. He's admitted he wasn't perfect on this. And they hope he would continue in his job.

Senator MACK. Mr. Cutler, you all, obviously, have had a long period of time to think through what the President's actions should be.

I, for one, draw the conclusion that if it is merely a statement by the President that he will not tolerate it in the future, I think that's a pretty weak signal. That's my own conclusion.

The CHAIRMAN. Thank you, Senator Mack.

Let me just take a moment, before yielding to Senator Shelby, to announce the results of our morning's votes on the nominations.

The vote on the nomination of Janet Yellen was 18 to one.

The votes on Julie Belaga, Danny Davis, and Susan Baron were 19 to zero. They've been reported favorably to the Senate.

Senator Shelby.

Senator SHELBY. Thank you, Mr. Chairman.

Senator D'AMATO. Senator, I was wondering, could you yield to me just for 30 seconds?

Senator SHELBY. I yield, without losing any time.

Senator D'AMATO. I thank my friend.

Mr. Cutler, I just want to make this as an observation because it really follows Senator Mack's line. I've found this area, one area of Mr. Altman and his, at the best, lack of forthcoming. At the best, I see it with this Committee.

The letters of the 2nd and 3rd are sent. Then a subpoena drops. I submit to you that if there were no Special Counsel out there, this Senator has a feeling that we wouldn't have gotten a letter on the 11th. And, I would absolutely bet the ranch that we never would have gotten a letter on the 21st.

It was only because subpoenas were dropping and good counsel were conferring and advising them that they had better get that

letter in on the 21st. And he did not. He—and this is my conclusion. But, after studying these facts, he did not want to tell the Committee about recusal. He just didn't want to go into it because it opened up that whole Pandora's Box and a situation that was tortuous to him. He had gone through that torture.

I just share that with you, for whatever it's worth. And I thank my colleague.

The CHAIRMAN. Senator Shelby.

#### **OPENING STATEMENT OF SENATOR RICHARD C. SHELBY**

Senator SHELBY. Thank you, Mr. Chairman.

Mr. Cutler, we're pleased to have you. It's been a long night—or morning.

We're pleased to have you with us. You've been around with us all week, chatting with a lot of us from time to time, as always.

But you weren't at the White House when all of these events that we've been talking about this week occurred, were you?

Mr. CUTLER. No, and I'm glad of that.

Senator SHELBY. We're all glad.

[Laughter.]

A lot of us believe if you were there, we wouldn't be here today. But we are.

Today concludes only the first phase of these hearings, hearings limited in scope, but, I hope, not limited in purpose. Scope, because we worked out an agreement. We passed a resolution limiting ourselves, dealing with the Independent Counsel, on what we would get into.

I'm hopeful, as things unfold, that we can get this Committee into more and more of this because I think that there are a lot of things that have not been brought out yet. What they are, I don't know. But you know, one thing leads to the other. One clue leads to the other. One trail leads to the other. I think we and the American people will learn a great deal.

What have we learned this week? It depends on your perspective, what you really heard from the witnesses, what you observed, what you read, what you think.

I'm deeply concerned now, as I was earlier in the week, about Roger Altman's candor, his forthrightness, his ability to tell the truth to this very Committee.

What did he withhold? Why did he withhold things? Why didn't he come with a full accounting? Those are important questions. Mr. Cutler, you know that. Those are very important questions that go to some of the heart of this hearing.

Why was it so important, I would ask, to this Administration that Roger Altman not step down, not recuse himself?

If you refer to the diaries of Mr. Steiner, you can interpret them various ways. But, Mr. Eggleston, I believe, the White House Counsel, filled in a few words and said that's what he thought, that, basically, this Administration didn't want strangers—those are my words—strangers running the RTC. They wanted someone they knew over there.

That's human nature. That's common sense. Especially when things were going on at the RTC, coming up through the pipeline, civil and criminal, that were more than a passing interest to the

Administration, more than a passing interest to this Committee, and more than a passing interest to the American people.

Second, Ms. Hanson. Do we believe her? There are a lot of gaps there. There are a lot of things.

You mentioned the word, I believe earlier, when you were referring to a question or a comment by Senator Bond. You used the phrase, extenuating circumstances.

Mr. Cutler, I don't believe, in dealing with Mr. Altman's testimony, maybe—but I don't believe, when it comes to telling the truth to this Committee or any other Committee, any congressional oversight Committee, about official contacts by a highly placed Cabinet official, when it comes to telling the truth when he's asked a specific question, that there should not be extenuating circumstances. It should come out. It should be a total accounting. I differ with you on the use of that phrase.

These hearings are important and they're going to go on. I believe that this week, although it's been exhaustive, has also been revealing.

What little time I have left, Senator Kerry, I'm going to yield to the Senator from Massachusetts. He wants to get to the floor.

Senator KERRY. Mr. Chairman, I appreciate my colleague very much. His time is probably about to run out. The only problem I have is that, like Senator Dodd, I've been asked by Senator McCain to come down on this amendment.

Could I use the time?

Senator D'AMATO. Go ahead.

The CHAIRMAN. Are you in a position, Senator Faircloth, to allow Senator Kerry to go, so that he can go to the floor, without inconveniencing yourself?

Senator FAIRCLOTH. Go ahead. Yes.

The CHAIRMAN. Thank you very much.

#### OPENING STATEMENT OF SENATOR JOHN F. KERRY

Senator KERRY. I thank my colleague very, very much. I appreciate it.

Mr. Chairman, first of all, I really want to congratulate you and thank you and thank Senator D'Amato and Counsel on both sides.

I think this Committee did an extraordinary job in a very short time of pulling together a remarkable number of depositions and information and has staffed us well. And, I think as uncomfortable—and I really feel it is uncomfortable. I feel very uncomfortable at the end of a long week of listening to this, grilling people, trying to find the truth. These are people's lives. They've come up here, subjected themselves to remarkable scrutiny, and it just isn't fun. Anybody who thinks it is doesn't understand it.

Second, I think the American people have to, despite occasional flare-ups and moments where we have partisan expressions, they have to be able to take, I think, some comfort from the notion that the process, messy as it occasionally is, has worked here. And, I think, worked to the credit of this institution particularly, and I'm proud of that.

I am not going to review all of the evidence at this point in time because I really believe that we ought to take some time to think very carefully about all of the evidence. I will just say that I am

not capable, this morning, of measuring everything in a way that allows me to make a judgment about who did what.

Given the seriousness of those judgments on people's lives and on their investment in this country and in a career in public service, we just owe it to them and to ourselves to complete this process with the full measure of dignity and thought necessary.

I think there are nuances of testimony, particularly the deposition that came in late last night from Ms. Hanson, that have to be weighed before we come to a final conclusion.

That doesn't mean that we can't have an overall sense of this. I respect colleagues who want to express that and I think we can do that.

I want to say, Mr. Chairman, and I will ask a question at the end of a couple of these comments, but there were two issues that we were asked to come here and make a judgment about. I think Mr. Cutler has eloquently addressed the first one and nothing more needs to be said about it with respect to Mr. Foster.

The second is the question of contacts. I hope the press will take the time to write about what didn't get shown here as well as what did. Because what didn't get shown here is almost more important, given the months and months of allegations, than what did.

I think people who have been dragged into this vortex are owed an expression of the reality of what did happen here.

In addition to that, I want to express my appreciation and respect for the fact that this has been different from most prior investigations. And I've been involved in a number of them, from Iran-Contra, the early stages with Oliver North, to BCCI, to Noriega and drugs and Contras and other things. This has been an effort that has been remarkable for the information being turned over to us, for the cooperation of the White House, and for the willingness to provide witnesses. I think that's important.

It is fair to say that, on the issue of contacts with the Treasury, there is no evidence, whatsoever, in front of this Committee of the investigation being impacted. In fact, there is evidence to the contrary, that it was intensified and accelerated. I think the American people also ought to take note of that.

Now, having said that, obviously, there are some individuals who have presented us with problems and there are still some circumstances that present us with problems. I'm not going to go into all of those.

But, I do want to say that I don't think we have evidence of a dark conspiracy or of some creeping malevolence here. I think we have evidence of overzealous, sometimes insensitive, perhaps even unthinking overreaction to perceived political situations, and that those led some people to make some plain, old, dumb, insensitive judgments.

I don't see the evidence of some grand effort, particularly when you measure the fact that all of the contacts we examined were initiated by the Treasury Department. Over the span of 5 or 6 months, there was never one effort initiated by the White House, except in reaction to what came to them from Treasury.

That, obviously, raises the stakes for judgment about the Treasury. We will exercise, I'm sure, some comments about that in the next days.

I think it is very important for us to place this in its proper context. It seems to me, finally, Mr. Chairman, before I just ask one question of Mr. Cutler, that we ought to take note of the fact that every single one of us are living in a very different atmosphere than the one I entered politics in 10 years ago, and some of you entered before that. We are called on, in this city and in our lives, to exercise a kind of judgment that goes well beyond legal and codified ethical standards.

We have to, on a daily basis, exercise a kind of judgment that comes to us not from law school or from any school, but from life experience, perhaps learned from parents, but certainly learned through life itself. That's a different kind of judgment.

Some of the people who came before us, clearly, were able to exercise that in a way that meets our approval and the approval of the American people, and some didn't. But, I think we have to be very, very careful about applying standards that even we might not meet or couldn't meet.

As we think about this, and I'm going to take my pad and sit down and work it out, carefully, and sleep on it for a few days. I think we owe it to ourselves to also think, very carefully, about that measurement of ethical standards we apply to ourselves.

So, I ask a question to you, Mr. Cutler, which is really based somewhat on the question that I asked Mr. Nussbaum last night. And, I want to emphasize, despite my disagreement with his judgment, I fall in the Dodd school. I think he's a wonderful human being and a strong advocate. I just disagree with his decisions in this instance.

But, I asked Mr. Nussbaum about the list of items that were examined in the Office of Government Ethics report, which I know you've read. I said to him last night, all, indeed, allow you to draw a legal judgment that an ethical standard wasn't broken because they're structured in a way that they don't really fit the situation completely, or they don't take into account this other kind of experience or standard that I'm talking about.

I wonder if it's your judgment, having looked at this as carefully as you have and having thought about it as much as you have—is there a way for us to really put people on notice in some codified form or in an Executive Order, in a standard, or are we always going to be washing around this fuzzy line between what comes from just judgment, good judgment versus this moving moral standard that we all live under?

MR. CUTLER. I think, Senator Kerry, we could do better. First, we could devise a set of channels, who can talk to whom, even about a heads-up or other information relating to a criminal or civil proceeding that involves the President or other high Government officials.

We could improve the channels and confine the channels. We could have a set of ground rules about when you give a heads-up, for example, and when you don't, when you convey other information, and when you don't.

And, again with 20/20 hindsight, had we had such a set of rules in place last January and February, perhaps Mr. Altman and the other Treasury people wouldn't have done what they did. At the

very least, it would have been Counsel to Counsel and handled in a much more sensitive way.

I do think, as I said, it's a job for the Executive Branch to do in the first instance. It's how we in the Executive Branch communicate with one another. But, it is something I think you're entitled to look over as part of the oversight function and we probably would benefit a great deal from your advice on how to do it.

It's more than just experience, horse sense. That might have solved the problem for you. But it would be better to have some firm rules.

I might note, parenthetically, that you here in the Senate and the House have a heads-up system about subpoenas. As I understand it, under House rule 50 and Senate rule 11, if any of you receive a subpoena from a law enforcement agency, you need the permission of the entire body in order to comply with the subpoena. And the subpoena, itself, gets spread on the public record.

A subpoena, for example, if it related to the House Bank or the House Post Office, might contain enough information in it to give a great deal of heads-up to all of the Members other than the one who actually received the subpoena.

We need rules about those things. You have rules here about how it should be done.

Senator KERRY. Thank you very much.

The CHAIRMAN. Thank you.

Senator KERRY. I thank my Chair and I thank my friend very much for his courtesy.

The CHAIRMAN. I want to just, if I may, take a moment to say, Senator Faircloth, how much I appreciate not only your courtesy just now to Senator Kerry so that he might go ahead of you and then tend to his duties on the floor, but you have been unfailingly courteous in terms of the issues of scope of this hearing that we've had to deal with.

I deeply appreciate that. I know how strongly held your feelings are. But, on every occasion, you've been courteous, reasonable, and helpful to the work of this Committee. I'm just, personally, very grateful for that.

#### OPENING STATEMENT OF SENATOR LAUCH FAIRCLOTH

Senator FAIRCLOTH. Thank you, Mr. Chairman. Needless to say, I think you've done an outstanding job, a really great job in handling the hearing in a very fair and honest way.

In fact, I'm very much surprised to find myself and Senator Sarbanes absolutely agree.

[Laughter.]

But, you have done a great job.

The CHAIRMAN. Thank you.

Senator FAIRCLOTH. You've had a lot of egos to deal with and you've done it very gracefully.

Mr. Cutler, I thank you for being with us this morning.

Mr. CUTLER. Thank you, Senator.

Senator FAIRCLOTH. I have just a very few short and simple questions.

How long have you been the White House Legal Counsel?

Mr. CUTLER. I came aboard on March 10, and I really took over the Counsel's duties on April 4, which was the effective date of Mr. Nussbaum's resignation.

Senator FAIRCLOTH. So you were not actually at the White House when these events took place that the investigation has really centered on.

Mr. CUTLER. That is correct, Senator Faircloth. I probably overlapped the last of Mr. Altman's letters.

Senator FAIRCLOTH. Mr. Cutler, you discovered 40 White House contacts with the Treasury or the RTC. Mr. Fiske only discovered 20. You only talked to White House employees, whereas Mr. Fiske had access to anyone, anywhere.

Did Robert Fiske, the Clinton Administration Special Counsel, ask you how you found twice as many contacts as he did?

Mr. CUTLER. I believe, Senator Faircloth, what he said in his little five-page report was he found more than 20. It's always a question of what it is you count. I think there are some telephone conversations you would count as a contact. There may be brushers in the hallway in which a few words were expressed you might not count.

I think we listed in the neighborhood of the high 30's to 40. I haven't actually counted them up.

But, from what we have heard, number one, from the document submissions we made and the Treasury made, and from what we have heard from the witnesses before the Grand Jury and their lawyers, Mr. Fiske appears to have done a very thorough investigation.

Senator FAIRCLOTH. This probably is true. This is a personal opinion. But, I personally feel that Mr. Fiske could have been and should have been far more aggressive than he has been. Maybe, before the investigation is over, I will see that I am wrong. I hope that I do. Maybe he has been aggressive in areas that I haven't and we haven't been able to look at. But, so far, I've been disappointed in the approach he has taken to it.

Mr. CUTLER. Yes. Let me just submit, Senator Faircloth, when we go to the length of saying we can't trust the Attorney General and the Attorney General's criminal division to do an objective investigation when a high Government official is involved, we have an Independent Counsel. I think we need to be careful not to set so high a threshold that no one can hurdle it.

If Mr. Fiske is going to be judged as inadequate, and I suppose you have the right to do that, who in the world is going to be adequate who is also nonpartisan?

Senator FAIRCLOTH. Some of the contacts and relationships of Mr. Fiske with White House staff and people prior to his appointment concerns me. But that will be determined at a later date and we will see. Let me ask you another question.

Did you have any conversations about Madison Guaranty or criminal referrals with anyone at the White House, the Treasury Department, or the RTC when any of the events under investigation actually took place?

Mr. CUTLER. No, with one exception, and that is when the general, broad issues of recusal, appointment of Independent Counsel, et cetera, were up in January and February. I did have some con-

versations with Mr. Nussbaum and Mr. Klein in which I initiated at least most of them, and I was just advancing my view, as a good Democrat with some gray hair, as to what I thought they ought to do.

Senator FAIRCLOTH. Did you question any White House employees under oath or penalty of perjury, or have you at any time?

Mr. CUTLER. No, we did not. We interviewed the members of the White House staff who were involved in these contacts and we also had access to the Treasury and the RTC Inspector Generals' depositions, under oath, of the White House employees who we made available for that purpose.

So, yes, we examined sworn transcripts of what they said, in addition to interviewing them.

Senator FAIRCLOTH. Did the same thing apply to the Treasury Department employees?

Mr. CUTLER. On the Treasury Department side, we, again, had access to the transcripts of the sworn depositions conducted by the Treasury and the RTC Inspectors General jointly, and we did interview two or three Treasury officials. I believe they were Mr. Altman, Mr. Steiner, and we interviewed Jean Hanson's lawyers, not Ms. Hanson herself.

May I, since I'm turning behind me, introduce my two very faithful, very able litigating colleagues, Ms. Jane Sherburne, to your left, and Ms. Sheila Cheston, who is the Deputy—

Senator D'AMATO. I would say, for the record, Mr. Chairman, I had an occasion to meet both of them and we had a matter that could have been somewhat controversial. You're to be applauded for the manner in which we were able to resolve production of documents.

Mr. CUTLER. They're both former partners of mine and I can attest to their qualifications.

Senator FAIRCLOTH. Mr. Cutler, so, really, your knowledge of the events that took place was gathered from Administration officials by testimony under oath or direct questioning and what they've told and provided to you.

Mr. CUTLER. Yes.

Senator FAIRCLOTH. Mr. Cutler, I thank you for the report and, again, I thank you for being here. But before I yield back to Senator D'Amato, I just want to say one thing.

I'm relatively new to the Senate. I'm not a young Senator—well, I might be a young Senator, but I'm an old man.

I came from 40-plus years in the private sector doing business, meeting payrolls, both in business and in farming, and came from a very small eastern North Carolina town, one of those areas that really doesn't exist much any more. But, it's still the type of place where you don't need to lock your doors and if somebody tells you something, you can believe it. You don't need to doubt it or question it.

They haven't heard about graceful ducks and convoluted truths and distortions. In fact, I had lived 65 years of my life and I had never heard of the word, recusal. But I've heard it enough this week to make up.

[Laughter.]



Mr. CUTLER. Congressman Frank was talking in the House about redacted recusals.

Senator FAIRCLOTH. I hope that this Administration will take some common sense and maybe learn from what we've seen and heard here. Learn that you don't have to beat around the bush. You can come straight forward and say what you mean, mean what you say, be effective, and save a lot of time.

It will serve them well. In the rest of the examination to go, it will save a lot of time and will make a much more thorough and complete investigation.

I thank you, and I yield my time to Senator D'Amato, if I have any remaining.

The CHAIRMAN. Thank you. Let me just indicate that we're in the second bells of a vote here. Senator Bryan is next in the order. I don't know if you want to try to take your time now. I know Mr. Cutler has also indicated that he'd like a brief respite as well.

Senator BRYAN. Why don't we do that now?

Mr. CUTLER. I'd be happy to go a little longer if Senator Bryan wants to.

Senator BRYAN. Do we have time? How much time do we have?

The CHAIRMAN. We have 6 minutes, plus the 5-minute override. You have 11 minutes. I don't know if you want to try to do that or not.

Senator BRYAN. I will attempt to do that, Mr. Chairman.

The CHAIRMAN. All right. Senator Bryan.

Mr. CUTLER. Could I just say one word in answer to Senator Faircloth?

The CHAIRMAN. Go ahead. He's permitting you to do that.

Mr. CUTLER. Senator Faircloth, I just wanted to say, I appreciate what you said. But, there is such a thing as good faith differences in recollection about when a meeting occurred or what people say.

I do think that has to be taken into account in many of these circumstances.

I listened, the other evening, to a long debate among the Members of the Committee about what the nature was of a ruling that had been made on relevance just the evening before. There was a considerable difference in recollection among the Members and none of you had a written record of exactly what it was.

No one called the persons who differed in recollection liars. Nobody said, somebody must be committing perjury.

These things happen. People do remember things differently. I don't say that answers everything that occurred here. You may very well have reason to rely more on the total openness of some witnesses than others. But there is this important point about honest differences in recollection.

Senator FAIRCLOTH. I could not agree with you more. Certainly, there are honest differences. But, clearly, if you watched the proceedings here, you have seen that all of the things that have come forth have not been from total honesty. Some of them have been a practice to deceive.

A pretty tangled web we weave when we begin to practice to deceive.

Mr. CUTLER. Right.

The CHAIRMAN. Thank you. The Committee will stand in recess for about 10 minutes, and then we'll resume at the end of the vote.  
[Recess.]

Senator KERRY [presiding]. The hearing will come to order.

Senator Riegle has asked me to reconvene the hearing. Since this has been a long week, we intend to try to do that, with the hopes that we can end soon.

Senator Bennett, I think you're next.

#### OPENING STATEMENT OF SENATOR ROBERT F. BENNETT

Senator BENNETT. Thank you, Mr. Chairman. I appreciate that.

Mr. Cutler, welcome. I've enjoyed your testimony. I've enjoyed your op-ed piece. I find myself in agreement with it from a general point of view.

When somebody is heaping these kinds of kind words on you, you know there's a barb coming.

Let me go to your testimony, particularly page 4, where you list the additional measures to assure that future contacts between the White House and Executive Branch agencies with law enforcement functions will be beyond reasonable challenge.

I applaud everything you list on page 4. I am impelled to make the general observation that this has the odor of negotiated settlements that I have seen in the business world where the corporation or individual who has been under some attack says at the end of the settlement, we did nothing wrong and we promise not to do it again.

I have a little of that sense about what you have here. You come to the conclusion that we did nothing wrong and by virtue of these things, you promise not to do it again.

I do want, specifically, however, to comment on your last paragraph at the bottom of that page, in which you reaffirm that we did nothing wrong. You say, the primary issue raised in these hearings is whether the machinery of Government was misused by the White House to influence the outcome of a law enforcement inquiry in its own favor. The evidence shows, unequivocally, that this did not occur. You conclude—the machinery of Government has not been misused. I agree with that.

However, that does not mean that some people didn't try to set up a situation where it could have occurred.

As I've sat through this and gone through this, I believe that happened. It did not occur. You're absolutely right. Your conclusion is absolutely right. But, there were some people who wanted, as a defensive posture, to be in a position where they might be able to call on the circumstance to have it occur if they were pushed to what they consider to be political extremists.

I think, as we agree with your overall conclusion, we must not lose sight of the fact that the motive was there. In my view, that actions toward that end were taken. That is why the things you list on page 4 need to be put in place, so even that will not happen in the future.

I'd be happy to have you comment on that before I go on because I want to be completely fair to you.

Mr. CUTLER. Right. I'm glad, Senator Bennett, that you agree that in the end, nothing happened that influenced the outcome or

the progress of any of these law enforcement inquiries. I believe that is the case.

I think it is very important. One reason why these procedures, I think, are so important is if you accept the premise that a heads-up is legitimate as long as it's not misused, then we will need procedures that make it appear to the public that even though there has been a heads-up, indeed, it will not be misused.

There is this issue of appearances.

With respect to your inference or tentative conclusion that there were some people, as you say, who wanted Mr. Altman in this position so that they could appeal to him, if necessary, at some point, I would really—it's a matter of reading the evidence, I agree, but I would really question that inference.

Mr. Nussbaum, remember, was very concerned about the Ricki Tigert case, the Ricki Tigert precedent.

Senator BENNETT. Yes. We went through that.

Mr. CUTLER. I think that was very much on his mind. It is true, he also apparently said, that if you're there, the career people, as to whom, at least one of them, he had some misgivings, will act in a more professional manner.

But even that doesn't suggest they were going to call on Mr. Altman to stop something from happening or to slow something down. It's quite the contrary. Mr. Altman had told them he was going to do whatever they recommended.

The failure of Mr. Altman to recuse, or the White House to push him toward recusal, you could fairly say, may have created the appearance that he was there to do something, if necessary.

Senator BENNETT. Yes.

Mr. CUTLER. And, that, we would take steps to prevent in the future.

Senator BENNETT. OK. And we can differ as to whether or not it was just appearance or substance, and that's where we are.

Mr. CUTLER. I hope in the future, we'll remove any basis for an inference of substance.

Senator BENNETT. OK. I've noticed that you've been present at most of these hearings and I congratulate you for that. I think it's appropriate that the White House Counsel pay that much attention to these issues, that he will be physically here, and get the flavor and feel the dynamic that even television can't give you.

In that context, I'm going to ask you a blunt question. Having gone through all of this and felt that flavor, do you believe that Mr. Altman could ever come before this Committee again and testify to us in matters relating to his job as Deputy Secretary, with any degree of credibility that this Committee could accept?

Mr. CUTLER. In the end, this is something that you have to judge. I recognize that.

But Mr. Altman has admitted his error, it seems to me. He has shown a great deal of contrition. He is a man of great ability.

To me, at least, it would seem, and I must repeat, again, it's your judgment, he has been made to suffer enough. He can continue to be a very good public servant, which is what he came down here to do.

Senator BENNETT. I can agree that Mr. Altman is a very good man and all of the other things that you're saying on a personal basis about him, but I repeat my question.

Do you think that he has any credibility left with this Committee after what has happened? And you've sat here through all of us, more than anybody else. You're a physical participant in what's gone on.

Mr. CUTLER. Yes. I was not here, Senator Bennett, while the Treasury people were testifying. I did watch a great deal, I admit, on television.

I would hope that you, as many of the Senators have expressed, weigh that carefully as you review all of this evidence, that you reserve judgment until you see the latest depositions and other things that have been developed on the House side. And, I would hope that you would come out thinking Mr. Altman has suffered enough and he's a man whose career is worth preserving.

Senator BENNETT. I agree he's suffered. My issue is the credibility.

Thank you.

The CHAIRMAN. Senator Bryan.

#### **OPENING STATEMENT OF SENATOR RICHARD H. BRYAN**

Senator BRYAN. Thank you very much, Mr. Chairman.

Let me preface my comments with a couple of observations, if I may.

I approached the hearings on this issue, which began last week and have continued into this week, with considerable apprehension, initially, in terms of how they would be conducted.

I must say, to your great credit, Mr. Chairman, and to Senator D'Amato, our Counsel, both the Majority Counsel and Minority Counsel, I think you have all done just an outstanding job.

It's been lengthy, grueling, difficult, and not easy for most of us, but I think you have performed in the highest traditions of the Senate.

It may not have been our finest hour, but I think, by and large, we have probed into the critical questions that were presented by these facts and each of us has drawn their own conclusions.

Mr. Cutler, I think that you, sir, are a national resource. In the sound and fury of the political eruptions that punctuate the landscape of this city, we're often very narrowly focused. Some of us are new to the institution.

I read with considerable interest and great respect the article that you wrote in the Post last week, entitled, "A Heads-Up History," tracing some of the experiences that dated back to the Truman Administration, Eisenhower, Kennedy, Johnson, and more recent Administrations.

I think that institutional history, that corporate memory of the national body politic, is important. It's unfortunate, I think, that sometimes we don't get that flavor. I think it's helpful to be reminded of that and to keep it in perspective.

I agree with you, completely, in your analysis of the criteria that an individual ought to use in making a determination whether he or she ought to recuse himself or herself under given circumstances.

I am on your side of the line on that and disagree with Mr. Nussbaum, as much as I respect and admire the ferocity of his own views and the depth of his own convictions.

I want to pose a couple of questions, if I may.

As you and my colleagues know, I have been profoundly disturbed by Mr. Altman's testimony and the follow-up letters that sought to expand upon that. Although, I think, regarding Mr. Eggleston, Mr. Klein, and Mr. Podesta, that their instincts, as I've characterized it, were quite good. I think their analysis—they were right on the issue. I mean, you can't get much more prompt than to, literally, leave a hearing and make a phone call to the White House on a cellular.

I think, even by the standards of the 20/20 hindsight, as you characterized it, you can't be much more alert to the problem than this.

What I do find troublesome, and what I'd like to ask you to comment on, is your analysis of the ethical standard in terms of refusal, which I agree with. I'm still troubled by that meeting of March 1, at the White House. My recollection is that Mr. Eggleston was there. I believe Mr. Sloan was there. Mr. Podesta was there. Mr. Klein was there.

I'm troubled because, as it was characterized to us, they were discussing how to deal with this testimony, which I have charitably called incomplete and misleading. They seemed to be guided by this legalistic standard—what are we required legally, the standard goes.

May I suggest, with all due respect to the enormous experience and integrity that you bring to bear on this process, that we in the Congress are entitled to a higher standard than that. I think there's an affirmative obligation not to mislead by omission and to be forthright with the Congress.

And so, my question—I'm not going to ask you what you think of Mr. Altman's testimony. I'm asking you, prospectively, it seems to me that we need to expand upon that criteria in terms of what the obligation of a witness testifying before the Congress of the United States is?

Mr. CUTLER. I think there is a higher standard. I think that a higher standard was applied by that group of lawyers.

I've discussed it with them and, particularly, with Mr. Klein and Mr. Eggleston. Their sense was not necessarily what is legally required here. It was a sense of whether there was a significant omission in the testimony and in the sentence that spoke of only one meeting and no other meetings, whether that was, speaking of the Treasury as a whole, misleading, and whether or not Mr. Altman knew about the other two meetings at the time.

I think they were applying a higher standard and that they did their best with Mr. Altman. And, as I indicated earlier, I'm sure they would have pursued that until everything had been done, but for the arrival of all these subpoenas and the need to retain lawyers and the almost, by implication, drawing of an iron curtain between the White House and the Treasury.

Senator BRYAN. I think you've characterized that as extenuating circumstances, and I would agree. I would agree that everything seemed to come crashing down on about March 3 or 4, as I recall.

A follow-up to your recommendations. You've told us essentially two areas, as I understand it, and I want to ask you about a third.

You're talking about the need for tighter controls within the White House and you've established a new set of guidelines—that's my word. Maybe you're using a different word—but a protocol, if you will, in terms of how the White House, the staff, and Counsel for the White House should handle these difficult situations.

You've recommended to us, and I wholly agree, that we ought to amend the Vacancy Act. That, in itself, was, in part, the genesis of the problem. We would agree.

I'm troubled about another area that I recognize will fade into the sunset, we hope, on or before December 31, 1995. That's the creation of this amorphous body that is the RTC.

Mr. Nussbaum has testified, as did Ms. Hanson, that it was not independent in the sense of the SEC, and they've made some very fine legal arguments. I'm going to accept their conclusion from a lawyer's point of view. But, clearly, it was contemplated that they should function independently.

My question to you is do we need to do anything, either by way of regulation or statute, to make sure that wall of separation exists between the RTC and its day-to-day functions and responsibilities?

I'm talking about prospectively, without making any retrospective judgments on how they handled the situation at Madison, to make sure that even though, legally, it may not be independent, it nevertheless should function independently in terms of conducting its day-to-day responsibilities.

Mr. CUTLER. Yes. I think you're raising a broad philosophical, legislative, and constitutional question, Senator Bryan.

As you know, Congress has created a certain number of truly independent agencies, the litmus test being can the appointed head of the agency confirmed by the Senate be removed by the President at his pleasure or is he limited to removal for malfeasance in office or some such thing?

Most of the agencies that we've created as truly independent are regulatory in nature. They regulate some industry like the trucking industry or they regulate the safety of food and drugs or the television industry, or whatever.

They do partly adjudication and partly rulemaking, which are legislative and judicial functions. That's how independent agencies first got to be approved as constitutional by Congress, even though they exercise part of the executive power and the President, under the Constitution, possesses, or is supposed to possess, all of the executive power.

If you look at an entity like the RTC or the FDIC, they are really not regulatory agencies of that type. The RTC is there to sell the assets of these failed savings and loans and to pursue claims against the officers, directors, borrowers, et cetera, if there was a serious fiduciary or criminal neglect of duty.

That is not the normal concept of regulation. And, beyond that, it's in the financial area where the Secretary of the Treasury ought to have some say. He is, in the case of the RTC and the FDIC, on the supervisory board, even though he has no day-to-day executive powers.

I would think for the RTC, as you say, it's academic. But, I would really question whether you want that kind of agency, not a regulatory, adjudicative, rulemaking agency, to be truly independent.

Senator BRYAN. I'm not sure we would agree with you on that, Mr. Cutler.

Mr. CUTLER. Yes.

Senator BRYAN. I appreciate your comments.

Mr. Chairman, I want to yield back because my time is up. Senator D'Amato was not here when I made some preliminary observations. I just want him to hear, directly, that the distinguished Senator from New York, I observed at the outset that I think the manner in which these hearings have been conducted by the Chairman and yourself, and the bipartisan cooperation of legal Counsel on both sides, is something that I want to personally comment on.

It's obviously made a very difficult job easier, and I wanted to congratulate you and the Chairman and the respective Counsel.

Senator D'AMATO. I thank my friend. I might note in the wrap-up, I want to take a little time to speak of the bipartisanship. This is tough. Let's not kid ourselves. This is tough because there are politics involved. Anybody that says there aren't political overtones, they're kidding themselves.

But, notwithstanding that, there has been a real effort to get the facts. Differences of opinion, fine, but with respect to each other's rights.

I might say, and I will take some time later, that the staff has been extraordinary, the professional staff. This Codinha fellow was a fellow who I didn't know and who I was very skeptical about. Tough guy. But I want to tell you something. He is one terrific lawyer and has called them right down the middle.

Everyone who's associated with him can be proud. You have credited yourself in the highest traditions of your profession. The legal profession gets shot down over and over. I want to wait until Mike Chertoff comes here to mention something about him because he has sacrificed. He has made a great sacrifice, just as I know you have, in taking a leave of absence from his law firm to add to a distinguished and tremendous record.

A number of Democrats have come up to me and said, when you've got Chertoff—Senator Bradley, because he comes from his State, where Mr. Chertoff was a former U.S. Attorney up until very recently said, you've got the best. So we have a team. And they worked as a team.

I'm deeply appreciative.

The CHAIRMAN. Who's next on your side?

Senator D'AMATO. Ready to go, Bill? Yes. Senator Roth.

The CHAIRMAN. Senator Roth.

#### **OPENING STATEMENT OF SENATOR WILLIAM V. ROTH, JR.**

Senator ROTH. Mr. Chairman, this seems to be turning into a love fest.

[Laughter.]

Senator BENNETT. But before it does——

Senator ROTH. Before it does, yes.

[Laughter.]

No. I want to join the others in congratulating you, Senator D'Amato, and the professional staff. All of you have brought great credit upon yourselves.

Let me just say to you, Mr. Cutler, that I think the White House is indeed fortunate to have, at this time, a man of your pre-eminence, intellect, and integrity.

And, in that capacity, of course, I would, frankly, expect you to put the evidence in the best light from the standpoint of the White House.

You and a number of others have consistently pointed out that, according to Mr. Fiske, there is no criminal violation, and that according to the Office of Governmental Ethics, there are no ethical violations. I think Mr. D'Amato addressed that earlier in showing that the findings are somewhat restricted, somewhat limited.

But then you do go on to admit that there are some troublesome aspects to what happened.

One of my concerns, Mr. Cutler, is that, in a sense, by asserting that they're not ethical violations, but troublesome, that they may be underplayed when, in fact, I think that they are quite important and quite significant.

We have some regulations or a memorandum issued by Mr. Nussbaum on February 22, 1993, in which he sets forth prohibited contacts with agencies. And, to summarize what they say, this memorandum establishes standards generally prohibiting White House staffers from contacting investigative agencies, including the RTC and the Treasury Department, regarding specific pending civil and criminal matters without either going through or obtaining the authorization of the White House Counsel's Office.

You're familiar, I'm sure, Mr. Cutler, with that.

Mr. CUTLER. Yes, I am, Senator Roth.

Senator ROTH. Yesterday, or during these hearings, we had a number of admissions from White House staffers—Mr. Ickes, Mr. Stephanopoulos, in fact, the former Chief of Staff, that these bans have been violated.

One of my concerns is the distinction that you're bringing to this kind of violation. As I said, you say there's no ethical violation, but there are some troublesome aspects.

Now, to me, and, I think, to the public, what concerns me—to the public, I think that the distinction you seem to be drawing is somewhat without a difference because when considering possible ethical violations by White House staff, there are, of course, several relevant standards. There are the criminal statutes, such as 18 U.S.C. section 28, governing financial conflicts of interest. There are the Executive Branch standard of conduct regulations.

Then there are the ethical standards established by the White House itself. And that's what the Nussbaum memorandum was. Is that not correct?

Mr. CUTLER. Yes. It is really what you might call a rule of engagement, I would suppose. It is not one of the—and I don't mean to be drawing lawyer's distinctions here—it is not one of the standards of ethical conduct that apply to all personnel within the Executive Branch.



Senator ROTH. But the purpose of this memo was to govern, to be guidelines of the White House staff, which is at the top of the Executive Branch.

Mr. CUTLER. That is quite right, Senator Roth.

Senator ROTH. You're not saying that they were not important directions, are you?

Mr. CUTLER. I think they're quite important. I think they could be written better.

Let me say first, though, with respect to your earlier comments, remember where we were when the news of the contacts first broke on the public's attention as a result of your last oversight hearing here.

The talk then was that there must have been obstruction of justice. There must have been criminal violations. Time magazine ran a story about that.

We got to the point where Mr. Fiske concluded his investigation and found there was no basis for going after anyone for criminal violation, but he didn't cover ethical violations.

So, then, the next issue, and one of the purposes of this hearing, was to identify any violation of the standards of ethical conduct. It now turns out, based on the Treasury-RTC Inspector Generals' factual findings and the White House factual findings, the Office of Government Ethics concludes formally in their case, informally in our case, that there's no violation of those standards of ethics.

There remains the question that you have raised about violation of these rules of engagement, as I call them, inside the White House.

I think they were violated.

Then you have to judge, well, whose fault is it and how serious is it?

I think there are some faults in the rules of engagement themselves. For example, it deals solely, or primarily, with what White House people are to do, and what contacts they may initiate.

All of these contacts were initiated from the Treasury, or most of them. Certainly, all the early ones were. Beyond that, it says, you other White House staff people can't do this, except with the approval of White House Counsel.

The first contacts were made by the Treasury with White House Counsel.

Senator ROTH. If I could just—

Mr. CUTLER. And that conferred a certain patina of approval on what happened subsequently. We could do better with these.

Senator ROTH. If I could just interrupt, just to point out, in the case of the telephone calls by Stephanopoulos and others on Stephens, those were initiated by the White House.

Mr. CUTLER. Absolutely. They were initiated—yes.

Senator ROTH. Let me say, the thing that concerns me is that from the man on the street's point of view, to the extent that they're following what we're saying, it seems to me we're talking about distinctions that are extremely hard to follow.

In issuing this memorandum, the former White House Counsel, which everybody agrees is a very able man, stresses the importance of these regulations. As he says, as we're all aware, it's imperative that there be public confidence in the effective and impartial ad-

ministration of the laws. Political figures and others may seek White House intervention in pending criminal and civil matters, but it undermines the administration of justice if the White House even appears to be interfering in such cases.

What concerns me here is that, in questioning some of the White House Counsel, and, indeed, some of your comments, it seems to understress the importance of this ban of contacts from public confidence.

I find that somewhat bothersome. It's my understanding that you may be publishing, in the near future, some new regulations based on what you've learned from this experience. But, again, it seems to me to try to say, well, these aren't ethical concerns, but questions of conduct or something else, misses the point. The point being that these do involve a very important guideline that should have regulated the acts of the White House.

Mr. CUTLER. I agree with you, Senator Roth. I agree that it is vital to preserve the appearance that information received by the White House is not being misused.

That is one reason why, rather than have contacts between nonlawyer personnel at the White House with nonlawyer personnel in the other agencies go on if approved by the White House Counsel, we're recommending now that all contacts be limited to the White House Counsel or Deputy and the Attorney General or the General Counsel of the agency, whatever it might be. That will give us much better control. That wouldn't permit a Stephanopoulos-Ickes phone call to Josh Steiner.

Senator ROTH. You beat me to the punch because that was the next observation.

The CHAIRMAN. Senator, I've not called time because we've went over quite a bit. But I know other Senators are waiting.

Senator ROTH. My time is up.

The CHAIRMAN. Thank you. I appreciate that. Sorry to interrupt you.

Senator Boxer.

#### OPENING STATEMENT OF SENATOR BARBARA BOXER

Senator BOXER. Thank you, Mr. Chairman. I will try to stay within the time.

Mr. Chairman and Senator D'Amato, except for the week before my election to the Senate, I haven't felt like the days were endless.

This has been the longest week of my life since then. As much as I enjoy the company of all my colleagues on both sides on this Committee, I cannot wait to get on the plane to California and talk to people who don't know what a defacto recusal is.

Senator D'AMATO. I still don't.

[Laughter.]

The CHAIRMAN. There's nobody out there that knows, either.

[Laughter.]

Senator BENNETT. You're talking to him now.

Senator BOXER. So, with that said, I want to say to both leaders on this Committee, and to Counsel on both sides, thank you for all the cooperation you've shown all of us.

Even at 1 a.m., I was very anxious to get Ms. Hanson's latest deposition into the record. I believe it was important that we seek

the truth about the testimony. I was very concerned, and am still very concerned about that matter.

I believe that that cooperation in getting the transcript last night was indicative of the bipartisan nature in which we approached this.

I think we all realize that human beings and their reputations are at stake here, and we need to get all the information into the record. So, I want to thank you very much.

Mr. Cutler, I'm very glad that you're the White House Counsel. Although you can't wait to get back to normal life, I think a lot of us yearn for that from time to time, I think that it will be a loss to our country because, not only are you a good lawyer, but you're a learned person and, I believe, a fine teacher.

We're never too old to learn.

I think you, in your presentation, have given us some very good things to think over as we take some time away from these hearings.

I just have to add that we've seen some very fine people come before us during these few days, and I believe it shows the good judgment of our President to have selected these people. I think it's important that we not forget that.

I want to comment, briefly, on your testimony, just in terms of giving you some of my views.

I agree with your comments on recusal very much.

Mr. Chairman, could I ask that there be order.

The CHAIRMAN. Yes. Of course.

Senator BOXER. Thank you. I very much agree with your comments on recusal. The fact that it was brought up in the first place was wrong. As I said to Mr. Nussbaum, it put him in a difficult spot and he was taken unawares. Instead of gracefully saying, let's not talk about this, he did. He showed his views and it should never have happened. I agree with that.

But, of course, the big debate around here is the debate over the diary saga. Was this intense pressure? What was this?

I don't want to beat a dead diary and go into it any further. The fact of the matter is, as I put my common sense hat on and listened to the people who were there, I believe that the pressure came from within Mr. Altman. There was no concerted effort on the part of the White House to put pressure on Mr. Altman. Again, I think that is a very important point.

Second, I agree with your point on amending the Vacancy Act, and I've discussed that with some of my colleagues. I hope to play a role in that, to the extent that I could be helpful. I hope you can help us as we approach that issue.

I think what happened to Mr. Altman was that he was put in an untenable situation, a very bad situation. I don't think we should put anyone in that situation again. We have the where-withal, I hope, to remedy that problem.

Where I don't agree with you, and I think this is an important point, and I intend to think about what you've said very carefully. But right now, where I don't agree with you is that I believe it is better never to discuss criminal referrals outside the regulatory agency, even if there's a press leak, one or two or three of them.

I realize that I would go further beyond where the Office of Government Ethics goes. You're absolutely correct. They ruled that there was a legitimate governmental purpose. But, frankly, at this point in my mind, and I will continue to think about it, I just think it's better to say, leave that within the agency.

Now I come to a question which I don't think we've really explored enough in this Committee—why did all this start?

All this started because someone in the RTC, a regulatory agency, leaked a very sensitive fact. We have laws against that. We have the Privacy Act, 5 U.S.C., section 522, specifically prohibits the unauthorized disclosure of RTC criminal referrals. And we have other sections in the law that prohibit confidential information from being disclosed. It is a punishable offense.

To me, it is shocking that RTC employees seem to so regularly break these laws. I believe it must stop. So many things came out of this hearing, but that is certainly one that I didn't want to let go by without comment.

I'd like to ask you if you agree with me that this is a problem? What is the best way to get enforcement of that particular law?

Mr. CUTLER. I certainly agree, Senator Boxer, that leaks are a problem. I don't think passing laws about leaks is going to stop leaking.

Senator BOXER. We already have laws that prohibit it.

Mr. CUTLER. We have the laws.

Senator BOXER. My question to you is how do we best enforce it?

Mr. CUTLER. When you get to the question of how do you find out who leaked, you run into the basic principle that a reporter will not discuss his sources. There are even reporters' privilege statutes in many cases, I think in California, among others, so that even in a criminal case, a reporter may be protected from disclosing his source. It becomes very, very difficult.

Think of the leak that Ms. Scalino of The New York Times had just a day or two ago, of exactly what happened in a principals' foreign policy national security meeting in the situation room of the White House. It was attended by no more than eight or 10 people from the various departments who went out and briefed the people in their departments, who may have briefed the people who worked on their staffs. And somebody somewhere told a reporter.

Think of the leaks that have come out of the documents that we furnished and the Treasury furnished to this Committee and to the House Committee. I'm not accusing anybody of anything. But this information circulates among lawyers. It circulates among staff. It circulates among Counsel to the parties. It's a very, very difficult thing to deal with.

On the question of whether there should ever be a heads-up, I take it you don't dispute the desirability of a heads-up from the Attorney General, let us say, but whether there should be a heads-up from an agency which is simply making a criminal referral to the Attorney General. It's an interesting, debatable point.

Are you aware, for example, that the Internal Revenue Service tells the subject of every criminal referral that a criminal referral is being made? I believe the SEC does the same thing.

These banking agencies, like the RTC, have the opposite policy. But, while they have the policy that it must not be done, they leak

all over the place. You heard direct RTC testimony that as soon as this referral got to Washington, it would leak.

Senator BOXER. Thank you very much, Mr. Chairman, again, for all your courtesies.

The CHAIRMAN. Thank you, Senator Boxer.

Senator Gramm.

#### OPENING STATEMENT OF SENATOR PHIL GRAMM

Senator GRAMM. Thank you, Mr. Chairman.

Lloyd, I know you weren't there when it happened. I know you don't have the information that we don't have. And I know you're too wise to speculate on what you don't know. So I'm not going to spend my final moments of this long series of hearings asking you questions.

I think everybody's glad you're there to help clean up the mess, to pull the rug over the stained spot. We wish you had been there to try to prevent the whole thing from happening.

Mr. CUTLER. I just—if I could interrupt a moment, Senator Gramm.

I want to leave before I make a mistake that this Committee or some other Committee will be investigating.

[Laughter.]

Senator GRAMM. I want to do the same thing on this Committee.

Let me just make some observations, having sat here now for many hours, about what I have concluded and what I feel. I want to make it clear that I am speaking solely for myself.

First of all, I think it is indisputable that Roger Altman was put under immense pressure to remain in a supervisory capacity in the investigation involving Madison Savings and Loan of Little Rock, Arkansas. This pressure was applied, even though, I believe, there was a clear conflict of interest, given that Mr. Altman was a long-time friend and close associate of the President, whose name had been mentioned in the criminal referrals. So intense was the pressure as perceived inside by Roger Altman that he wrote of it in his diaries. Mr. Steiner, his Administrative Assistant and confidant, was writing of it in his diaries. Evidence of this pressure is found in what people were putting on their computers. Mr. Altman perceived this intense pressure as coming from the top.

I think the pressure was totally inappropriate, totally inexcusable, and simply wrong. I think Roger Altman's effort to hide that pressure, to hide what he was doing, and, in essence, why he was doing it, was worse than inappropriate.

I think what we have obtained in these hearings is a quick glance inside this problem. We all know, as many of us said on the day the hearing started, that we are looking at a very, very small part of this problem. By the resolution that was passed by the Senate, we were limited to three areas of inquiry initially. Then, the only relevant part of one of the three areas, that is, the papers at the White House that were not turned over as part of an investigation concerning a suicide, was moved out of bounds because of an ongoing investigation.

But, I believe, that even with a small glimpse at this problem, these Committee hearings have proven their worth. I think the American people know a lot more today than they did before these

hearings began. I think they have a keener insight into how this Administration works, and how sometimes it does not work very well.

I think they know more about this problem, and I think the American people and the Administration are, to some extent, beneficiaries of that knowledge.

I want to congratulate the Chairman of this Committee for the fair way that he has conducted the Committee. I think many people have perceived the House hearings to have been somewhat of a sham because of their strict 5-minute rules, the heavy-handedness with which they've been conducted, and what has been perceived as partisanship.

I think our Chairman, in probably the last act of his career that most people are ever going to know about, inasmuch as we're coming to the end of this Congress and our Committee is basically through with its work, has done an excellent job and has made himself and the Committee proud.

The CHAIRMAN. Thank you very much.

Senator GRAMM. I think people will remember that in a tough job, that was especially tough for a person in his party, the Chairman has conducted fair hearings that, I think, have reflected well on an institution that does not always get favorable light reflected on it. And, as a Member of the Committee who has benefited from the Chairman's fairness, I want to thank him.

The CHAIRMAN. Thank you very much, Senator Gramm.

Senator GRAMM. Finally, I want to say something about Al D'Amato.

We don't talk about profiles in courage very much any more. Maybe there's not as much of it as there used to be, or maybe, probably a more accurate statement would be that, you don't recognize it when it's happening in front of your eyes. You have to get away from it to recognize it. My guess is, even in our midst, there's lots of it.

I think Al D'Amato is one person who has exhibited so much of it, that even concurrently with his actions, some people have seen it.

It took a lot of guts for Al D'Amato to stand up on this whole issue of the statute of limitations. Al knew that he was going to be attacked personally, that old accusations against him, which had been looked at and rejected, were going to be dredged back up, that everything he did in this hearing was going to be challenged, and that personal attacks were going to be leveled against him.

I think it is fair to say that, without Senator D'Amato's efforts, we would not be here. The statute of limitations might well have expired. I don't think the public would have been well-served had it not been for this guy from New York who talks funny, who has a little flare of temper, who speaks with a loud voice occasionally, but who, I think, in this case, has been very, very courageous. I'm just proud to have been sitting next to him and to have watched it all occur.

I want to congratulate him for his leadership on this matter.

Senator D'AMATO. Let me thank my friend. He's been most gracious.

Mr. CUTLER. May I make a brief response, Mr. Chairman?

[Laughter.]

Senator D'AMATO. You don't want to thank me, Lloyd?

[Laughter.]

The CHAIRMAN. You may, although in this room, there is no such thing as a brief response, as you've heard.

[Laughter.]

Mr. CUTLER. You can put on the light. I can do this in 2 minutes—1 minute, I think.

I wanted to pick up on your statement that these White House-Treasury contacts were a small part of the problem, Senator Gramm.

In March, they were the biggest part of the problem by far. We had moved from a 15-year-old investment, a real estate investment, and what had happened to it, and an 8- or 9-year-old campaign contribution to a governorship campaign, to charges that now we had a clear case of misuse of Government powers inside the White House. How many of you have had accusations about campaign contributions during your careers? Talk of obstruction of justice, other criminal violations, subpoenas issued by Mr. Fiske against half the top officials of the Treasury and half the top officials in the White House, had never happened before.

We ended up with Mr. Fiske concluding that there were no criminal violations. The Office of Government Ethics concluded, formally or informally, that there were no violations of the standards of ethical conduct.

We ended up with questions of propriety, which we've admitted as frankly as we can. There were some things that needed correcting. But that's what we have come down to from where we started.

The CHAIRMAN. Senator Campbell.

#### OPENING STATEMENT OF SENATOR BEN NIGHTHORSE CAMPBELL

Senator CAMPBELL. Thank you, Mr. Chairman.

This last day of this first round of a very grueling schedule, I'd like to reflect on what some of the newspapers and media said this morning about how your conducting these hearings. I'm sure you read them, too. They were very positive. They said you've done it in a very thoughtful, complete, and fair manner. They, in fact, made the contrast of how the hearings were going on this side, as opposed to our friends in the other body.

I just wanted to compliment you on that. I know that when people get tired and begin to snap at each other, it's hard, perhaps, to keep control. But I certainly appreciated the manner in which you held these hearings.

The CHAIRMAN. Thank you, Senator Campbell.

Senator CAMPBELL. Also, it's my turn to preside in a while and then I have a plane out. With the 3½ hours or so it takes to make the rounds, I might miss the last round when it's my turn to speak.

So, with your permission, I'd like to ask unanimous consent to include my closing statement in the record. I assume there's going to be some.

The CHAIRMAN. Yes. Without objection.

Senator CAMPBELL. While I was here, I was particularly interested in hearing from Mr. Cutler, who has such fine credentials. I

know there's a very, very fine line, I guess, in what's called a heads-up.

This is a city known for its political ambushes. And, frankly, I think if there is—a person has the potential of falling into some trouble. I don't think there's anything wrong with a person receiving what is called a heads-up, or some indication, particularly if it's cleared by an ethics officer or an ethics panel, that he may be the object of an investigation.

That's obviously a little different from telling a person ahead of time so that he can establish some kind of quasi-good alibi for perhaps doing something wrong. I know that's a judgment decision.

It seems to me that if there's anything that stands out in all these hearings, it's that there doesn't seem to be a real clear chain of command in the Administration, and that there are so many staff people working in dual tracks without being responsible to anybody else in a chain of command. Sometimes they are working without communication, so they make their own.

By the same token, we seem to have a thing in place—I mentioned it when Secretary Bentsen was here—where we are almost driven by a fear of being accused of anything. We build these little compartments and walls and often recuse ourselves when, maybe, it wasn't even necessary to do so, from a legal standpoint, because we're worried about any accusations of impropriety.

Because of it, it sometimes, I think, makes people wonder who the heck is in charge, where the buck stops, or who actually makes the decisions.

I, frankly, don't have an answer for all that. But, as you mentioned, there is going to be a movement to revise and tighten the administrative practices. When you're involved with that, as I assume you will be, I would hope that we don't end up with the kind of Government or Administration where only lawyers talk to lawyers, where everybody's afraid to say or do anything until they check with their attorney first, and where only attorneys can speak for us.

I'm not trying to say anything derogatory about your profession, but it ought to scare the devil out of most of the American public, if that's the kind of Government that we end up with.

You yourself said that there are many quick judgments and decisions people have to make in the White House. Many times we're out of town, and a lot of decisions have to be made even without our input.

I don't know how that's going to be done if we're almost driven by political self-preservation and fear of accusations.

You also said, and I think you're a thoughtful man who sees the bigger picture—you don't have any axe to grind, you're not looking for a job, you're not looking for an appointment—I would think you, above most, would maybe see a broader problem in our Government.

When I think of the history of this Nation, I often wonder how President Roosevelt, a good Democrat, or President Lincoln, a good Republican, would have made some of their decisions if they had to go through what we have to go through to make our decisions. I wonder if they had to worry and be in constant fear of what the



press is going to say or what their colleagues on the other side of the aisle are going to say.

I wonder. This present system of playing gotcha, which we do altogether too much, in my opinion, is really going to deteriorate our ability to draw leaders into public service.

I said this before. Some of my colleagues have said it, too, and many of them are much wiser and have much more experience here than I have. But, when I see these hearings, and at times I'm in my office and have to run back over to watch them, I think of all the millions of impressionable youngsters who want to do public service, who want to go into Government service, and who have great aspirations and great dreams of where this Nation ought to go. They watch what we go through in this big game of gotcha.

I think, frankly, that we're going to lose some of our best potential or future leaders in this country if we don't find a better system of allowing them to be in Government without having the fear of being attacked all the time.

I don't really have any questions, but I do thank you for coming today and, Mr. Chairman, thank you for conducting these hearings.

The CHAIRMAN. Thank you for your gracious personal comments, Senator Campbell. I want to associate myself with many of the remarks that you just made because I think they're reflections that need to be made.

I want to just indicate, I've been handed a note that there will be two roll call votes starting at 1:15, just so Members can plan accordingly.

The next Member on your side?

Senator D'AMATO. Senator Domenici.

The CHAIRMAN. Senator Domenici.

#### OPENING STATEMENT OF SENATOR PETE V. DOMENICI

Senator DOMENICI. Thank you very much, Mr. Chairman.

Mr. Cutler, first of all, I appreciate your statements that you made after my remark a while ago. I can't remember them exactly, but I gather that you were apologizing to Senator Bond from Missouri.

Mr. CUTLER. I was, Senator Domenici.

Senator DOMENICI. You have a great reputation and, frankly, I just want to ask a few questions to clear up some of the inferences that I might have drawn from your remarks, including your off-the-cuff remarks.

First, might we make it absolutely clear on the record that the Office of Government Ethics report does not cover possible violations of the standards of conduct of White House officials?

Mr. CUTLER. That is correct, Senator Domenici.

Senator DOMENICI. And they said that literally. It isn't some inference. They said, "Our analysis is not intended to cover, nor should it in any way reflect upon the actions of individuals who are employed by the White House."

Mr. CUTLER. That is correct. They were dealing with the request from Secretary Bentsen to pass on the Treasury people.

They did review my findings set forth in my House statement. They cleared the language I used in my statement that they had,

informally, concurred in my conclusions that the White House people had not violated any of these standards of conduct.

Senator DOMENICI. Now, they did no interviewing. Isn't that correct?

Mr. CUTLER. Of White House people?

Senator DOMENICI. They did no interviewing.

Mr. CUTLER. The Office of Government Ethics never does any interviewing. But they did——

Senator DOMENICI. They reviewed transcripts?

Mr. CUTLER. They had available to them a report, this big, thick, white report, from the Treasury and the RTC Inspectors General, which includes depositions, sworn depositions, which we consented to and arranged with all of the White House people.

Senator DOMENICI. I want to clarify the record about a couple of more things.

Mr. CUTLER. Sure.

Senator DOMENICI. Because I think every serious White House witness has tried to say everything is really OK, and one thing they've used is that report, I just want to make sure that we've established what it isn't.

The OGE review also says this. They reviewed the report of the Treasury Inspector General, dated July 29, and stated, and I now quote: "One might reasonably conclude that the conduct contained in the report of officials of the Department of the Treasury did not violate the standard of ethical conduct for employees of the Executive Branch."

Right?

Mr. CUTLER. That's right. This was a report for Secretary Bentsen, as to what he should conclude.

Senator DOMENICI. Right. But "one might reasonably conclude," all right?

Mr. CUTLER. Correct.

Senator DOMENICI. Let me leave that and go to another subject, if I may.

Mr. Cutler, it is true, is it not, that the subpoenas that were issued all over the White House and for those people that you were here describing a while ago in your response to Senator Bond, that all of that occurred not because of Republicans, but because the United States Senate, including Democrats, was urging the White House to appoint a Special Prosecutor? That Special Prosecutor was appointed and that's why all of these legal bills that you referred to were incurred by the staff of the White House. I'm very sorry about that. But, it isn't Republicans that did that, is it?

Mr. CUTLER. I'm not blaming it on Republicans at all.

Senator DOMENICI. Thank you.

Mr. CUTLER. The Republicans, and many Democrats, called for Attorney General Reno to appoint an Independent Counsel, even though there was no Independent Counsel statute in effect at that time.

When the Independent Counsel was appointed, nothing was known about these White House-Treasury contacts. When they occurred and were brought to public attention, it was within Mr. Fiske's jurisdiction to deal with the charges in Time, Newsweek,

and elsewhere that these were serious criminal violations, and he issued his subpoenas.

Senator DOMENICI. All right. Now, the hearings that we have conducted here, you will acknowledge, will you not, have discovered many inconsistencies, under oath, by various members of the White House staff, Mr. Altman, Roger Altman from the RTC, Jean Hanson from the Department of the Treasury, and others?

You will, at least, acknowledge that we've done something right in that we've found a lot of inconsistencies. Is that true?

Mr. CUTLER. I'll certainly acknowledge that there are inconsistencies in people's recollection and in their testimony about the same event. Mr. Dean Acheson once said, when he was Secretary of State, that he had never seen a MemCom, a Memorandum of Conversation, in which the author lost the argument.

People do have different recollections of the same meeting. And Mr. Fiske did find that those differing recollections, under oath, did not amount to the basis for a criminal charge against anybody.

Senator DOMENICI. I understand that. But George Schultz, whom I assume you have great respect for, as an elder Statesman like yourself—

Mr. CUTLER. I had the honor of being his lawyer at one point.

Senator DOMENICI. Fine. He said, trust is the coin of the realm. You would agree with that, wouldn't you?

Mr. CUTLER. Yes. I used that same statement when I came to the White House.

Senator DOMENICI. You would also agree that trust is frequently based upon truthfulness, is it not?

Mr. CUTLER. Absolutely.

Senator DOMENICI. You obviously are not totally satisfied with the testimony of Roger Altman before this Committee on February 24, are you?

Mr. CUTLER. I don't think he is either, Senator Domenici.

Senator DOMENICI. Thank you very much.

Now, let me say to you, in all respect, none of the things that I have asked you here take away from the respect that you are held in, and that I hold for you. I mean, there's no doubt in my mind that you represent the President. There's no doubt in my mind that you are a partisan.

If there was any doubt about that, you alleviated that, not only from my head, but, I assume, from everybody that's listening today.

In fact, I have never heard you speak with such partisan fervor as you did today with reference to Republicans versus Democrats.

Nonetheless, I must say to you that when I started my participation in these hearings, I said I would have an open mind. I have kept it for as long as I could. But now, I must suggest to you that, I do not really believe we have seen just honest errors.

I believe that what we have heard, particularly from Roger Altman, is not that. Based on what I've heard, I can't convince myself that he was being fully honest, open, and frank with this Committee, either last February or this week.

I must conclude that he came before us this week, not to set the record straight, but to continue a twisted pattern, for some reason, of half-truths and of avoiding straight answers. I don't really think he helped the White House one bit in that regard or in his conduct

regarding recusal or his conduct regarding whether or not or why he recused himself. I should say that.

It seems to me that there's been much talk about rectifying this situation. In the future, frankly, I don't know if we can do that. I don't know if even your brilliance can rectify this. I don't know that we can build new standards for public trust. I don't think that we can build new standards of truthfulness.

I must tell you, as much respect as I have for young people, and I have plenty, I think a lot of things went wrong in the way some White House staff conducted themselves and in the way some RTC staff conducted themselves.

As you know, you won't be around to write an independent report of the next series of hearings. This is about 2 percent of White-water and I assume we'll complete them later.

Once again, thank you very much. Mr. Cutler, I'm very sorry that your splendid work in this regard ended up with your outburst here today. I wish it hadn't occurred.

The CHAIRMAN. Senator Moseley-Braun.

Mr. CUTLER. I would like, if I could, to respond, briefly, to Senator Domenici.

The CHAIRMAN. All right.

Mr. CUTLER. Senator Domenici, you know my respect and admiration for you. I felt I was being subjected to a political attack, and perhaps I responded in kind. I should not have responded in that way from this table. Perhaps that—it isn't done. I recognize that and I should know better. But that's what I felt at the time. I would like, though, to refer to your skepticism about whether there's anything we can do to satisfy people that the White House and the Government are acting ethically. If we cannot do something, Senator Domenici, and Members of this Committee, this country is lost.

We have built a cynicism about Government and people who serve in Government, especially in the Executive Branch. I won't refer to the rating of Members of the Congress with the public, but it's somewhere below even lawyers, I think. We've got to do something to persuade people that Government service is honorable, and that when you come to Washington you don't have to—besides filling out all these forms and everything else—you don't have to reserve a certain amount of money to have your own private lawyer the day you're investigated.

Now, you can say it's the fault of this group of White House and Treasury people that they got into that problem, but it has happened in every recent Administration, including those where Republicans were in the White House. We have to do something about it.

Senator DOMENICI. Mr. Chairman, might I respond.

The CHAIRMAN. Yes, of course.

Senator DOMENICI. Mr. Cutler, perhaps I'm not as good with the words or as articulate as you are. Clearly, I didn't mean we shouldn't do something about the cynicism in this country. But look, here's what Speaker Rayburn said, and this is what I'm thinking about. You never get mixed up if you simply tell the truth. You don't have to remember what you have said. You never forget what you have said or what they have said. Now, frankly, that's

what I'm talking about. You won't fix that with rules. You won't fix that with setting up new standards. That's just the truth.

I also would remind you that you don't fix what The Washington Post said about the way the President handled this with new rules. They're saying, instead of setting up a damage control group and then a heads-up following it, something much more precise should have been done. That's acting like you're still in a campaign, they say.

You're not going to fix that with new rules. And that's what I'm talking about. That happens in every Administration perhaps, but I'm led to believe that it happened here and we won't fix it, unless it is suggested from the very top that we not conduct ourselves this way.

Mr. CUTLER. Senator Domenici, there is not a shred of evidence before you of any interference of any kind with the progress of either the RTC criminal referrals and their subsequent investigation or the possible civil proceedings that the RTC might bring, not a shred.

The CHAIRMAN. Senator Domenici, I think you're entitled to have the last word here, if you so wish.

Senator DOMENICI. Clearly, Mr. Cutler, you cannot tell us what the ripple effect of contacts throughout this period of time is or will be. You can say, as of now, in a 2 percent sliver of the investigation, there is not one bit of evidence regarding interference, but that's not the whole story. When too many people know things like this, even you cannot tell this Committee what happened in terms of what they did or didn't do as a result of knowing about it. That's what we're going to try to find out.

My last point is this whole business of recusal. With the statute of limitations running, and only having 3 weeks, one doesn't know, Mr. Cutler, what might have happened if that statute of limitations had not been extended.

One doesn't know what would have happened if Ms. Kulka would have decided, "We might not have enough evidence, but I'm going to leave it to you, Mr. Altman, as to whether you want to file a protective suit." One doesn't know what might have happened, and I'm not speculating that I know what would have happened, but I think we're entitled to say it shouldn't have been put in a position or left in a position where anything untoward could have happened.

The CHAIRMAN. If I may, we've had three exchanges here, and I'm trying to be as tolerant as possible. Senator Moseley-Braun has been very patient. We can put additional statements in the record, but I'm concerned that if this continues there's no orderly stopping point.

Senator Moseley-Braun.

#### **OPENING STATEMENT OF SENATOR CAROL MOSELEY-BRAUN**

Senator MOSELEY-BRAUN. Thank you very much, Mr. Chairman. I have a statement I would like to put in the record regarding my view of the testimony of the witnesses.

The CHAIRMAN. Without objection, so ordered.

Senator MOSELEY-BRAUN. At this time, I'd like to make a few points. First, I think it's worth noting that this hearing has covered

a large point with the issues relating to the conduct of the President as President and as it relates to the Madison/Whitewater and to the way that his Administration has handled this matter.

While it is true that the Committee has not reviewed the matters involving the criminal referrals that are now properly before Independent Counsel, those matters did not involve actions that the President took as President but actions that occurred many years ago.

Second, I think it is important to remember, and as Mr. Cutler has just said, that nothing was done here to impede the course of any investigation by the RTC. The criminal referrals are now before the Independent Counsel. The RTC is continuing its investigation of the civil matters. Jay Stephens is still on the job. Nothing was delayed, nothing was narrowed, nothing was dropped. I think that is significant to point out.

Third, Madison, as I have stated in previous statements, represents less than  $\frac{5}{100}$  of 1 percent of the overall losses to the American taxpayers resulting from the savings and loan debacle. Our oversight in this situation, generally, has been, in my opinion, not very vigorous.

Given that the American taxpayers have lost over \$100 billion of their hard-earned money, our oversight of the entire savings and loan situation needs to be at least as vigorous as this oversight has been. I hope this Committee, therefore, will soon schedule hearings on how the RTC is doing in prosecuting civil claims and criminal referrals with respect to savings and loans whose failures were billion dollars-plus events.

The American public, justifiably, wants to see that fraud is vigorously prosecuted, that all civil claims are vigorously pursued, and that when the Government wins a judgment, it actually collects the money. I think we need to do more to insure that the RTC treats this as a real priority and I think we need to insure that, since the RTC will soon go out of business, no claims or investigations will suffer because of that fact.

Thus far, we have only collected about 3.5 percent of the over \$100 billion in losses the officers, directors, and other insiders of failed savings and loans have cost the American taxpayers. If we devote the same kind of effort to improving this record as we are to the matter before us now, and that we've spent the last week on, we will no doubt do better than we have so far.

That's not to minimize, Mr. Chairman, the importance of the matters that we are now reviewing. We have a clear, ongoing duty to oversee where the machinery of Government is misused and, in particular, whether it was misused in the Madison case, and I—again, Mr. Cutler spoke to that in his testimony. I think we have a fairly definitive answer to see to the matters that have been examined within the course of these hearings. It may have been mishandled, but it was not misused. I agree with Mr. Cutler's conclusions in that regard.

The problem, of course, is that the inquiry is still not finished. There are still unanswered questions that await the conclusion of all of the investigatory work surrounding the Madison/Whitewater matter. But, these hearings have served, in my opinion, to remove the clouds and shed the light of full closure on this part of the

issue. In that, I think we have done a public service. Ensuring public confidence in the Presidency is so critically important that it makes all of the time that we've spent well worth it.

Finally, Mr. Chairman, I want to reiterate what I said at the outset of these hearings. I said then, that while the public has every right to expect that the public's business is conducted ethically, it also has every right to expect that the public's business is, in fact, conducted.

The public does not expect honest, ethical Government at the expense of good, responsive Government. It, justifiably, wants both and I think it's entitled to both. It seems to me, therefore, that as we consider the reforms that may be needed, we make sure that reform does not prevent the kind of effective, accountable Government that we absolutely have to have.

We must prevent future situations of the kind that we have been reviewing here from arising again. We must do so, but we must do it in a way that does not hamstring the Presidency, the one official office in the Executive Branch that is directly accountable to the people.

And, finally, Mr. Chairman, with apologies to Ogden Nash, I'm reminded of a poem he wrote, entitled, "As I Was." I think this is a paraphrase.

As I was climbing up the stair, I saw a man who wasn't there. He wasn't there again today. I wish, I wish he'd go away. The suspicions, in my opinion, surrounding Madison will remain as long as any part of this investigation remains unfinished. I, for one, look forward to the conclusion of all of the investigations and hearings. I hope that, eventually, the conspiracy theorists will be relegated to the folks who saw Elvis at Lisa Marie's wedding.

[Laughter.]

I hope these hearings serve to encourage confidence in public service and to reaffirm, and I think this is an important point, that my generation has a lot of good to contribute to our country, that we aren't more slippery, that we aren't less ethical, that we aren't less honorable, and that we aren't less competent than any other group of people who have come in to try to serve in Government and contribute to our Nation.

I hope that the good this generation, my generation, has to contribute will not be taken away by a continual corrosion of confidence that the machinery of Government does not, may not work in the people's interest.

The people who testified here today may have made some mistakes but, I dare say, for any of us that never made a mistake we'd all be ready for sainthood. There aren't too many of those in the United States Congress, the Government, or anywhere else, frankly, for that matter, and that's unfortunate.

But, short of sainthood, when you have people that are willing to go out on a limb to engage in the hurly-burly and the hustle of trying to serve the public interest, who give up private careers, sometimes really lucrative ones, in order to work for the people's interests, put in these long hours, and put in these long days, they are trying. Short of lying to Congress, short of doing something that's against the law, adding something that's unethical, I think

we have to be very careful in condemning these people for what they tried to do right when they tried to do it right.

We have every right and responsibility to tell them, you messed up here. You didn't do this right. You violated the rules, you violated the perceptions that the American people are entitled to have. But, to cast aspersions on all of them, casts aspersions, I think, on all of us, and on the American people and serves to create a climate of opinion that is, ultimately, destructive of our democracy. I think we need to be very, very clear, as we make our findings and recommendations coming out of these hearings, that these hearings really did serve the interests of that democracy.

I want to congratulate you, Mr. Chairman. You have been more than fair to everybody. You have allowed this to go forward. I want to congratulate Mr. Codinha and the other staff for all of the hard work they put in to get all the information out here.

We have gone into exhaustive detail on every 10-second meeting that possibly could have occurred within this period of time. I think that's good. It may have been exhaustive, it may have been difficult, but in the final analysis—my mother used to say the Lord works in mysterious ways—what we did, I think, is remove a cloud to show the American people that there wasn't anything, with regard to this discrete period, there wasn't anything wrong done. This Government still works for the people of the United States and not otherwise. I hope that remains the conclusion throughout all of this investigation.

I look forward, Mr. Chairman, to working with you, the other Members of this Committee, and my colleagues in bringing this matter to a final resolution. The resolution we have reached so far, I think, served the interest of the people of this country by showing, in my opinion, that nothing untoward happened during this period and that we can get on with pursuing the real business of the American people, doing the work that they sent us here to do. Thank you.

The CHAIRMAN. Thank you very much, Senator Moseley-Braun, and thank you for such generous personal comments, too.

Senator Hatch.

#### OPENING STATEMENT OF SENATOR ORRIN G. HATCH

Senator HATCH. Thank you, Mr. Chairman. Mr. Cutler, thank you for the service you have given to the President and the White House since you've been there. You've done a good job. You have my respect. I think you know that. I'd also like to compliment our Chairman and our Ranking Member. I think you've conducted these hearings with a great deal of class and distinction, and I want to compliment both of you.

These have been contentious hearings in some ways, but they've also been conducted with a great deal of fairness. That's meant a lot to me. I appreciate it, and I respect both of you. I think both you and Senator D'Amato deserve a great deal of credit for working together in such a bipartisan manner to try to learn what really happened between the White House and the Resolution Trust Corporation with respect to the Madison Guaranty problem.

I also want to thank the two Counsel and their staffs. Mr. Codinha and Mr. Chertoff have both been tremendous. I've worked



closely with Mr. Chertoff. I've worked closely with a lot of attorneys in my day, and I've got to say you're as good as they come and as good as I've seen around here. Mr. Codinha, I respect you as well.

You've both done a good job. You took time off from your private practice to assist this Committee. You deserve a great deal of thanks from the American people. You've done a superb job. You had a grueling work schedule and, frankly, it's a testimony to your efforts, assisted, of course, by your able staffs, that this Committee uncovered and pieced together far more in 5 weeks than I think the Independent Counsel has pieced together in 6 months. I don't think there's any question about it. I'm confident that informed observers will recognize that this Committee has provided the most comprehensive account of Whitewater/Treasury Department/RTC communications related to the Madison Guaranty matter.

Finally, although I'm not a Member of this Banking Committee, I want to compliment each of the Members of this Committee for what I consider to be really excellent work on this matter. Each of you have impressed me with your dedicated efforts. I've been really tickled to see the way you've worked together, the humor that you've had among you, and even some of the heated exchanges that turned out to finally be expressions of friendship. I appreciate it. I think you've done a really good job. This is a fine Committee, and I think I'm going to take a message back to the Judiciary Committee that we can learn a lot from you. It's been a privilege to be on this Committee and work with all of you again. I want to thank you all. That's all I have to say, and I ask that my full remarks be placed in the record.

The CHAIRMAN. Without objection, they will be placed in the record. Thank you for your generous comments. It's been a pleasure to have you. If you want to come back again, we'd be happy to have you. I hope it's on another subject, but we'd be delighted to have you here serving with us.

Senator Murray, you've been——

Senator MURRAY. Wrap up.

The CHAIRMAN. You've been very patient and we always try to save the best for last here, so we're doing that with you now.

#### OPENING STATEMENT OF SENATOR PATTY MURRAY

Senator MURRAY. Mr. Chairman, I appreciate that and I thank you. I join my colleagues in thanking you and Senator D'Amato and your able staff for steering us through the maze of the last week. I think you exemplify one of the lessons we've heard here: You need some gray hairs, although, looking at all of you, I think we have to add bald heads as well.

[Laughter.]

I also hope we recognize that we need the other end of the spectrum as well. Youth, exuberance, and the hope of the future are critical parts of this combination.

Mr. Cutler, I enjoyed seeing you today and hearing your comments. We welcome you to this Committee. You've sat through a number of speeches and I apologize for the fact that you're going to have to sit through mine here at the end.

I have to remark, it's amazing to me, being able to listen to you today. I think you practiced law here in Washington, DC, before I was born. I appreciate the wisdom sitting in front of me.

Mr. Chairman, I think that the hearing over the last week has been very interesting. The conclusions that will be drawn from it will probably vary across this room. I think there are some lessons that we all can learn from. We need to look toward some of these lessons in the future, and I want to talk about just a couple of them in my short time.

The first one comes from what Senator Boxer mentioned. This whole investigation began because of leaks from the RTC, and I think that we have an obligation, as public citizens, to look at the question of whether the media is dictating public policy. I think it's a question that deserves to be discussed at length.

The second one is the question of how agencies should transfer information, if they should, and when they should. I commend you, Mr. Cutler, for taking on that issue and really starting to look at it, not just for this Administration, but for future Administrations. It's a tough issue and I appreciate the work you're doing on it.

The third one is the issue of recusal, and the standards for recusal that, I think, we're setting for the future. I fear that maybe we're setting the ethical and the legal standards, but making the whole question of public opinion a part of that determination. Mr. Cutler, I heard you say earlier that if there is any question of recusal in Washington, DC, one is better off recusing. I agree with that, but I do have concerns about it, too, because if that is the case, we will never have a head for the RTC who will be able to deal with the Madison case. Everyone will have to recuse themselves. Somehow, in the future, we're going to have to balance setting objective standards on ethics with accounting for public perception.

Finally, is the lesson that we send our youth from what we have learned today. And, to address that I have to, sitting here this Friday, look back at last Friday to draw a comparison.

Last Friday we began these hearings with the death of Vince Foster. I can't help but go back to his comment, "Here, ruining people is considered sport." I hope that is not the lesson that we send to our youth. I do hope that what you brought to us today is the lesson that we send on. In your words, "Honest people can make mistakes."

I think it's terribly important that our children understand that we do make mistakes, all of us do, and that we recognize this. We apologize for them, we step up to them, we make changes so they do not occur again, but then we move on. If we can't learn that lesson, there won't be any gray hairs in Washington, DC, in the next generation, because there won't be any left to be there. Thank you.

Senator SARBANES. Thank you very much, Senator Murray.

Senator MACK, I think you're next for recognition; is that correct?

Senator MACK. I would just ask that a op-ed piece in The Wall Street Journal by Jim Leach be included in the record. It addresses what has been said over and over and over again that there has been no evidence that anyone in the White House, the RTC, or the Treasury has tried to impede, obstruct, or interfere with the RTC civil investigation or the handling of the criminal referrals. Mr.

Leach points out that there is some evidence now, as a result of the testimony from RTC General Counsel, Glion Curtis, that Jean Hanson happens to have been consulted on the development of the critical legal analysis on October 4, and on October 8. The analysis was provided to the criminal investigation unit which held firm, refusing to capitulate. And it goes on. But I'd like to put that in the record.

The CHAIRMAN. Without objection, so ordered.

Senator SARBANES. Mr. Chairman—

Senator KERRY. Mr. Chairman, I'm sorry you are about to recess for the—

The CHAIRMAN. Let me recognize you first.

Senator KERRY. Mr. Chairman, all I wanted to do—I've said my piece with respect to the evidence and Mr. Cutler—but I just wanted to acknowledge Mr. Codinha. I kept quiet about my association with Mr. Codinha because I didn't want to prejudice his job here or the Committee. We hired him despite that. Notwithstanding that you hired him but, I really would like to pay a special tribute to Mr. Codinha, particularly now that he's a celebrity and a hero. He and I have—

The CHAIRMAN. He also had a full head of hair when he arrived here, Senator Murray and you see what 5 weeks has done to him.

Senator KERRY. I can tell you he did when I met him, anyway. We worked together back in the DA's office years ago. We did some interesting organized crime and other cases together. Then he served, as I think everybody knows, as Counsel to the POW/MIA Committee and did a tremendous job. I must say, a few days ago he and I were having a conversation and he was telling me about Mike Chertoff. He commented about the enormous respect he had for you, Mike, and told me you were really one of the best lawyers he's ever met and he's met a lot. So, I tell you, privately he's said the same things you've heard publicly today. I think he's made a very special sacrifice, twice now, to come down to Washington. The reputation of the Committee and the comments of all of our colleagues, I think, is a tribute to their work, but I particularly wanted to salute my friend.

The CHAIRMAN. Senator Kerry, I'm going to make some remarks a little bit later, after the votes. We're going to excuse Mr. Cutler here in a moment. Did you—

Mr. CUTLER. I just wanted to make a quick remark in response to the Leach article which Senator Mack just put in. I understand that on the House side, this morning Mr. Leach, in effect, retracted the essence of those charges. He was relying on a deposition by an RTC person named Dudine who said this morning, in testimony before the House, he never said what Mr. Leach attributed him to have said. When Mr. Leach referred to the deposition, it became evident the charge in his article was on the basis of a misreading of Dudine's deposition.

And, if I could also just add one more word. I think there's been an implication that all of these errors that may have happened were on the part of very young people. These errors were on the part of old people as well as young people and, as Senator Murray said, we need these young people in our Government.

Senator D'AMATO. Mr. Chairman, I am going to make a statement at the conclusion, I guess, when we come back from our votes, but, before our colleagues leave and go down to vote, there are several things I'd like to say. First of all, the warm, high regards and praise that Senator Kerry has given, as it relates to Bill Codinha and his professionalism, are echoed by Mike Chertoff who has told me that it's been a pleasure to be associated with him.

Don't forget there is a built-in advocacy as it relates to how we've arrived here, and I was—I remember the first time I saw him I looked at him, uh, another bald guy, but no, anyway, seriously. We could not have, on our side, been represented by a more tireless, distinguished finder of fact, putting the pieces together. That's what these two people did, these two distinguished gentlemen. Mike Chertoff and a great team of people have made great sacrifices. Joe Braunreuther, Roman Darmer, Pool, and Goldenberg have all made great sacrifices. I just want to say to you that we are deeply, deeply appreciative of not only your scholarship, your work, your advocacy of the things that you believed in, but the manner in which you did it, really doing the work of the people. I just wanted to add my testimony to your work, Mike, and to yours, Bill.

The CHAIRMAN. So it will fit in at this point in the record I'll finish, excuse our witness, and then we'll come back. We'll adjourn briefly, then Senator D'Amato has a closing set of comments he wishes to make. I'll do that as well. I want to say that Mr. Codinha has just been sensational. We first met when we had your job interview. You were on the job the next day. Mike Chertoff has been outstanding as well. The job defined for the two of you has been, simply, to dig out the facts. That's what we were told by the Senate Resolution to do. George Mitchell made it clear, whatever the facts were, find them, lay them out in the light of day. You've assisted us in doing that, and so I say to you, your professional staffs, Kelly Cordes, who has helped us with the arrangements in this room, and her administrative staff, that we're deeply grateful for all that work. Beth O'Neill Maloney and Neil Kravitz have assisted you enormously and we're very grateful to both of them for that. People, literally—and the Banking Committee staff, Steve Harris, Mitchell Feuer, and all the rest, have just been absolutely outstanding. Also, Howard, on your side, has been terrific. This is the way the Senate ought to work. I wish we were working on something else. We didn't ask for this assignment, it was given to us, and I'll say more about that when we come back.

Mr. Cutler, we thank you for your testimony. My understanding is that we have no further questions for you at this particular time. We appreciate your appearance here and we excuse you now. We'll take a recess and be back after these two votes, then Senator D'Amato and I will finish up today.

[Recess.]

The CHAIRMAN. The Committee will resume. I want to just make a comment before yielding to Senator D'Amato. I want to publicly thank my colleague from New York for the exceptional cooperation that he has offered to me, as Chairman, and that we have been able to, together, provide to the Committee on a bipartisan basis. We've had lots of differences, some obvious in some of the ex-

changes—I don't say between you and I, but between Members on both our sides. We've had some very difficult issues to resolve in terms of our process and procedures. We've been able, after good faith negotiation and discussion, to resolve each and every one of those. That would not have been possible without the extraordinary help and goodwill you've brought to that effort. I'm deeply grateful for and appreciative of that. There's no way in the world we could do this job properly, in my view, without that kind of cooperation.

I want to say to your staff, Mike Chertoff has been—also somebody I've met for the first time about 6 weeks ago—has been as diligent with his team, as Bill Codinha has been in leading our investigative team, and then the regular staff members of the Banking Committee have just worked nonstop since we were given this assignment by the Senate.

I just want to say, I think this is the way the Senate ought to work in terms of being able, despite sharp differences that may exist here and there, to work cooperatively together. I think that's what the country wants and that's the way we've operated now for some years. We've done it on every single issue. We've had a lot of legislation enacted that's important for the country on that basis. In any event, I'm very grateful and I will always be grateful for the cooperation and help on this effort.

Senator D'AMATO. Mr. Chairman, let me say, and not because it is the manner in which the so-called "club" operates, I don't tell people that I, genuinely, am proud of the work and the achievements that they have made possible if I don't mean it. And it's not usual for me to go out and throw laudatory bouquets. But, in this case, you set an extraordinarily high mark for achieving goals that seemed impossible. Within the matter of 5 weeks we had to assemble the witnesses, take depositions, and gather facts and information. And let me say, it was done by precious few. We're talking about a handful of people on each side that came in. We couldn't have done it without Mike Chertoff. But you made it possible because of the manner in which you made it clear that we were going to get the facts. It was never a question. If we had trouble with a witness, they were told if you don't come in voluntarily, we'll subpoena you. They knew it. They knew there wasn't going to be any ducking or weaseling out. And, as a result, I believe that this Committee has done a job that will now require others to examine their work.

Now, let me, if I might, stick to the prepared text, because, otherwise, it will take me much longer to say that which my staff has prepared.

Today is the last day of these hearings. They've revealed a problem of much larger dimension than most on this panel believed to be true when we started a week ago. I can tell you that is the case for me, personally. These hearings have just scratched the surface of the wrongdoing alleged in the Whitewater scandal. I agree with my colleagues that we should not render final judgment this day, but we have heard the testimony and seen the documents.

We will have to resolve several troubling questions. First, what is the reason confidential information about criminal referrals involving Madison was revealed to the White House? The danger's obvious; as the RTC witness testified, an investigation can easily

be compromised. We can never know. A legitimate purpose for these disclosures is far less clear. How does this confidential information help the White House deal with press leaks? Were they going to deliver it to reporters? How did this information help shield the President from embarrassment? Did it keep the President away from Governor Tucker?

Second, it will not do to say that the recusal decision was a tempest in a teapot. The top officials of the White House and the Treasury spent too much time agonizing over how to keep Roger Altman involved. But for the unexpected congressional extension of the statute of limitations, Mr. Altman would have been the final decisionmaker in Madison. At bottom, the question is why were they so afraid to leave the White House "defenseless" without Altman?

Third, we must also decide if, as Mr. Ickes testified, nonpublic information was revealed by Altman to the White House on February 2. Why would he say so if it were not true? Can we accept his efforts to dilute his testimony?

Robert Fiske's report said there was insufficient evidence to prove criminal wrongdoing. That conclusion, of course, reflects the extraordinary burden of proof which applies in a criminal case. But since the Fiske Report, we've heard testimony from Roger Altman that is clearly in contradiction to testimony he gave to this Committee months ago. And there have been evasions and contradictory statements made by other witnesses in an attempt to justify Altman's failure, and the failure of others, to live up to ethical standards.

I believe it's incumbent upon Robert Fiske to review the facts, as revealed by this investigative panel, and determine, once again, if criminal charges should be brought. In particular, given the fact that some of the testimony here seems to have changed after witnesses have had an opportunity to consider the testimony of their colleagues, we specifically suggest that Mr. Fiske take the testimony in our depositions and in this hearing and lay it side by side with the Grand Jury testimony.

Let him see whether further action should be taken. Let me say something else. We have not yet had an opportunity to explore the White House document handling phase of the Whitewater matter. Even so, new revelations have emerged in the last week that suggest that the White House has not been forthright about the handling of the Foster documents. The White House originally suggested that the documents were removed and sent to a private lawyer. Now, incredibly, we hear that they may have been stored in a closet in the White House residence for some period of time.

The same pattern of changing stories and misleading statements that occurred regarding the White House-Treasury contacts may be occurring again with respect to the White House document handling. We will have many of the same witnesses back. Their stories about the document handling will be subjected to the same exacting scrutiny that occurred here.

I think these hearings prove that the attempt to narrow the focus of this investigation was a mistake. All of the facts needed to be aired for the American public. They need to be aired and, eventually, they will be.

I congratulate, again, Chairman Riegle and my colleagues on the Democratic side of the aisle for making this, truly, a bipartisan investigative Committee. Now we continue to go forward, not as Republicans and Democrats, but as United States Senators, with an oversight responsibility in order to get to the bottom of this matter.

Let me turn to Roger Altman. Public office is a high privilege and responsibility. Those who hold the principle offices of state have obligations to be forthright and candid. They must have the courage to act with independent judgment. Roger Altman has fallen far short of this standard. The evidence is overwhelming yet, even at this late date, Mr. Altman continues to temporize, excuse, dodge, and shift blame in a desperate effort to cling to his public office. Mr. Altman's apology rings hollow. He should behave honorably and leave. Of course, we are the legislative branch, we cannot simply remove Mr. Altman. We can say that, from this day forward, we will be unable and unwilling to accept or rely upon any statement, action, or judgment of Roger Altman.

Let me conclude by saying, Mr. Chairman, that we did not come to this conclusion lightly. There's a very, very strong feeling that goes beyond the Members of this Committee that Mr. Altman, at this point, will have no credibility and we would find it difficult to rely upon any of his statements, actions, or judgments.

The CHAIRMAN. Senator Domenici or Senator Mack, are either of you seeking recognition? I'm going to then—Senator Sarbanes.

Senator SARBANES. No, Mr. Chairman. I made my statement earlier.

The CHAIRMAN. Thank you. I'm going to just try to make a few wrap-up comments here. It's been a long week, certainly for everyone associated with this effort here on the Committee. If there is anybody left out in television-land who's been following this, it's been a long week for them as well.

I just passed a Senator—not on our Committee—in the elevator who said he went to bed with us last night because he was home watching us on television and when he got up this morning we were still there.

Senator SARBANES. Mr. Chairman, I said to Senator Bennett after we broke for lunch, "Tomorrow I guess I'll go through withdrawal, not being here with everybody." He looked and smiled and then said, "I think I can handle it."

The CHAIRMAN. I think it's important, too, for people who have followed this from the beginning, to try to understand why it is that, when we go into session on a given day, we stay so long, go until 11 p.m. or 2 a.m. as we did last night. There are important facts as to why that was necessary. I just want to lay them out so people can understand the need to do that.

When the Senate passed its Resolution 229 authorizing us to do this investigative effort, in that resolution, which was passed only 6 weeks ago, they told us that we had to start our first hearing on July 29, and that that was our fixed starting date. So, in the space of, then, 5 weeks we had to start from ground zero. We had to go find two great Independent Counsels and ask them if they would come and do this work. They had to leave their families, come down here, and, literally, go to work and work 7 days a week for 5 solid weeks to get ready to start those hearings on time.

We did start them on time and, of course, that was the pressure on the front end in getting started. The pressure on the back end is that we start next week with the Health Care Reform legislation on the Senate Floor. That is going to be a full-time task of great importance to the country. We all have our own views and thoughts on that, but when that starts we can't be here working on this. We've got to be on the Senate Floor working on Health Care issues, debating it, casting the votes, and so forth.

During this week, while we've been having these hearings, as people who have been watching could see, we've been interrupted by votes, as we were, again, just now. There's a whole pattern of ongoing business in the Senate that requires us to come and go, to deal with it in different ways, not just to vote. Many of us have had legislative items on the floor to have to handle at the same time we've had to keep these hearings in process.

That is why certain Senators would be here at some times and not at others. They'd have other responsibilities going on at precisely the same time. That's why sometimes the same question would get asked two, three, or four times over. Because one Senator would want the answer to a question that might have been asked earlier by another Senator, but because that Senator was out of the room at the time somebody asked the question, they didn't hear the question asked and they didn't hear the answer, so when they came back they would have to put the question themselves. A lot of it does seem repetitive, and I don't know any way to solve that problem. That's the nature of the situation.

But the other side of it was this: When you have witnesses in where there are conflicts in what they're saying, and where there are direct contradictions, you have to examine people very carefully. You don't just examine them with cross-examination as witnesses, but you have to take documents, records, and other things that you can find that establish the truthfulness and completeness of what they're saying. That takes time, especially when you have conflicts. We have a lot of direct conflicts in the testimony here as to what the truth is and if people are being honest in the answers they're giving. It can take a long time to sort that out. And, sometimes, it's never completely sorted out. Finally, you just have to make a judgment at the end as to how the weight of evidence comes out. I think, in some of these situations, we're going to have differences of opinion around the table as to what we think and how we assess it. It's no different than a jury. This is not a trial as such, it feels partly like it, but it's different in important ways that I won't get into, but it's the same in the sense that we have to make a judgment at the end as to what we believe. We try to do that collectively and we try to do it individually but it's very difficult and we're all tired. And, like anybody that works long hours and gets tired, that has an effect on how you think about things, it slows down, at least for me, my processing time a little bit.

So, with respect to some of the things we've heard, I want to now weigh very carefully. In fact, I want to go back and read some of the cross-examination again. I want to read, again, what an individual witness said and then perhaps compare it, side by side, with what another witness said to try to make a final judgment as to why there was a difference, why there was a discrepancy, and if



somebody there was being less than truthful or less than complete in their answers.

In that regard, without getting into specific individuals, but to illustrate the point, we had one witness here one day who gave an answer to a question by Senator Sarbanes. And the answer to the question that was put by Senator Sarbanes was no, but what had happened was he had conditioned his answer in such a way as to enable him to give a no answer to the question. Senator Sarbanes, very skillfully, could see what was going on. He took the person's answer and, one by one, asked him to remove the qualifying aspects that he had very skillfully put into his answer. It took Senator Sarbanes about three slices to get the qualifiers out of there. Once he had done that, it turned the no into a yes on the very same question.

Senator D'AMATO. Mr. Chairman, if I might.

The CHAIRMAN. Yes.

Senator D'AMATO. That was absolutely one of the most magnificent pieces of examination that I have ever seen. I just want to commend my colleague. You did it with such art. You sliced away all of the fat and got right to the core.

The CHAIRMAN. It was a brilliant job. The bottom line was it was an illustration, if somebody was paying attention, of how a witness can very skillfully, in my view, give a false answer to a question by the very clever juxtaposition of words. And Senator Sarbanes, who has a keen ear and an even keener mind, shaved that away and got the truthful answer. That doesn't excuse the answer that was given in the first instance. When that happens it shouldn't be lost on people in the Executive Branch of Government, not just in terms of the initiating facts that caused this case to come before us, but also with respect to testimony given by witnesses here.

That's just my view. I'm not trying to speak for the Committee in saying that, but I have a very strong feeling about it. That's one of the things that we can't tolerate any longer, so I was very distressed. I thought we had to deal with some of that right in the course of these hearings. It takes a long time to strip away and get down, as close as we can, to what the true facts are so that we can put them there and make decisions.

I want to say also, in that same vein of trying to make some sense out of what looks like a process that takes an awfully long time, it can look like we're browbeating witnesses. I don't think any of us here have a desire to do that. I know I certainly don't, nor am I prepared, as Chairman, to tolerate the browbeating of witnesses. There are times when witnesses do not give straight answers and if you don't press them again and again you don't get the answers you need as in the illustration that I just mentioned with Senator Sarbanes.

There's a fine balance between the degree to which you press a witness and, oftentimes, witnesses will finally say that they don't have a memory of something. If so, then that's their judgment. They can say that. We'll leave it there and try to make a judgment based on other information and evidence that we have.

But I should say again, for the record, we took 37 witness depositions. That meant that before those witnesses came in here to testify, they had to first go and sit down with these two attorneys in

a room somewhere and, under oath, be subjected to questions and give answers to them in preparation for gathering the facts so that we could then come here with those deposition documents and ask them further questions to compare the testimony in the deposition statements of one witness against another. That's the process as it goes on. It takes a lot of time and it's demanding but that's what's required when you are trying to get the facts and sort them out.

We reviewed over 10,000 pages of documents. Now, you think about it, a 10,000 page book, it's a big book. A lot of the documents were handwritten notes or they were things that were hard to make sense out of. They came from different people at different times and you not only had to analyze all those, but you had to cross-relate them one to the other. It takes a long time to do it.

We took evidence from several branches of the Government, the Park Police as well as the Department of the Treasury, the RTC, the White House, and the Department of the Interior. I want to say, again, we got absolute cooperation from the White House; and to their great credit and to the President's great credit, everything we asked for we got in terms of both witnesses, in an unrestrained and unfettered way, as well as access to all of the documents that are within the scope of our resolution. I don't know of any other time in the history of this country when any Chief Executive has released his people, his documents, and their documents and came in here in a setting like this in as full a way. The President deserves credit for that. It's what he should do but it's the first time it's happened in such a full way as that, to my historical knowledge. That should be acknowledged and I want to say I appreciate that cooperation.

I want to thank the Members also and I want to say, again, particularly with respect to Senator Faircloth, on the scope issue. We were told by the Senate that we could only look at certain things within a certain set of boundaries so that we would not interfere with the outside investigation going on by Special Counsel Robert Fiske. And that was an absolutely appropriate request by him, in my view, and the instruction by the Senate was that we not go over those boundary lines and interfere with his work and perhaps jeopardize future prosecutors and financial recoveries, for example, that he might pursue. It's always a judgment call as to whether something is in or out of the bounds of the scope of our resolution.

I will say, with Senator D'Amato, we resolved every single one of those differences, disputes, and questions in a manner that was agreeable to both sides. And for that, I'm very grateful.

Senator Faircloth, who had an intense interest of wanting to go as far as he possibly could, did so, but at the point at which I had to interject to say that we were up against the scope limits, as we call them, he had the grace and cooperative willingness to stop. I want to say, even though he's not here at the moment, that I'm very grateful for that because he could have been contentious about it. I know he has a strong feeling about it. He worked within the process and I appreciate that and want to acknowledge it.

We're not here today, at least I don't feel we are, to draw final conclusions and to say exactly, I mean, each Member is free to speak for themselves, but in terms of a Committee statement, and I'm thinking of myself as Chairman now of the Committee, we're

obviously not at a point where we can render sweeping judgments as a Committee. We are charged with generating a report to the Senate, in addition to laying all these facts out in the light of day and, of course, we will do that. We will make recommendations for changes in the law and in administrative practices that we think are necessary.

I raised some issues with Mr. Cutler, who is still here, in my opening statement today. I'm going to insert in the record a legal brief we have that makes it clear to us that the RTC is an independent agency. I just want to make it clear that I hope, whether the Executive Branch agrees with that or not, they'll act in a manner that respects our view so that we're not back in here again on some matter that challenges that question. I don't foresee a problem in that area, but I want to make it clear that that's our feeling on it.

Let me say just a couple of other things, and I apologize for the length of this time, but there are several wrap-up things that I think need to be said. I think, with respect to the first day of our hearings, the tragic death of Mr. Vincent Foster, that the record is now complete in that area. It's just a terrible loss in terms of the circumstances that attach to that situation. But, I think that we were charged with reviewing those facts, and we've done so. I think that issue is clearly examined and settled and should be seen as so. I would hope that it could be left there so this family can deal with the grief they feel. Anybody that has a hard time thinking about it ought to think about how they would feel if it happened in their immediate family, and how you try to pick up the pieces and go on from there.

It's been said by many that Fiske, Mr. Fiske, the Special Counsel, has already come back and said, with respect to the areas in which we've done our review, that there was no basis for criminal action that he saw. His finding was clear on that. That was an important finding by him. We found, at least in my view—I don't see anything that obviates that, but I'm not speaking for the Committee, and to the extent that there is anything in our record that is in addition to what he may have, then, obviously, we, in effect, are automatically conveying that to the Justice Department and to him, so that he can add that to his body of information.

I want to just finish now by saying two things. I want to, again, thank the staff. When I was paying a tribute to you for the extraordinary effort you made you were out of the room, but I can't thank you enough. We'd never met 6 weeks ago and we made this climb together to get this job done. I'm deeply appreciative to you. I thank your family for the sacrifice. And the same with the staff here. We've got exceptional people at work here. They work 7 days a week. They don't complain about it and they do fine work for the country. That's the way our system works and thank goodness we have people who are willing to do the work.

In terms of individuals in this situation, I set forth, in my opening statement, a test that I was going to apply with respect to statements by witnesses before this Committee, both depositions and direct testimony. I said that people are going to have to be accurate, complete, and fully responsive to the questions, and I meant by that, not on the third try, the 10th try, the 15th try, 10

days later, 20 days later, or 50 days later, but at the time the question was posed. We've got some problems in that area, and I think the record is there to establish that. I'm troubled about that. I'm troubled about the fact that in the instances of some, I thought that was still a factor we were having to deal with right here in this room.

My view is that, I'm going to express some of my personal judgments in that regard directly, and to people who are in positions to receive that information. We don't have any power to hire or fire anybody. I mean, that's not our job, nor should it be, although we can have strong feelings about the performance of individuals. In terms of my personal views, my first instinct is to want to convey that in a direct, personal way, as opposed to a public way, but I think there are issues outstanding in that area that are important.

I think it's absolutely critical and should be clearly understood because I made this point as directly as I could to the Treasury Secretary when he was here and to Mr. Cutler, when he was a witness and he is still here in the room, that we can't have a situation in the future where anybody in the Executive Branch comes before this Committee or any Committee of the Congress and gives an evasive answer, an incomplete answer, or a less than the full truth answer, whatever the circumstances. And then, not at the earliest moment, if it's done by inadvertence, repair that fully. There are times when people can omit something from an answer because there's a misinterpretation or something doesn't come to mind or something can happen and that's understandable. We make an allowance for that.

I don't think that's what we're dealing with here, in some of these instances, so that is part of the reason why we're here. But, if nothing else is clear out of this, it's clear we can't have that. If this Government's going to work, we've got to have a situation where the information we get the first time is reliable. It's full, complete, honest, and direct. People can't go through graceful ducks or anything else, or whatever phrases anybody else wants to pick. Whether they're questions asked by someone on this side or on that side, every Senator's questions are important and every one needs to be answered fully and directly by every witness. Any other system just is not a working system in terms of democracy as I understand it.

So, with that, I want to finally thank my colleagues. There's no way in the world we could do this job without the tremendous commitment and talent of Senators like Senator Sarbanes and the others, going right down the aisle on our side, and Senator D'Amato and all of the rest of the Members on his side, and their staff.

I think every Senator worked as hard on this assignment, in a short timeframe, as I have seen during my time in the Senate. It's not uncommon, by the way, for Senators to work that hard. I think every Senator works that hard, on a variety of issues, virtually every day. People had a chance to see it here. They saw that when we had to go until late into the evening to fit this compressed timeframe problem that we had, everybody stepped up to the assignment and did it. I'm very grateful for that.

This is a team effort and this team, I think, performed in a way that I certainly feel proud about and I thank everyone for that cooperation.

So, with that, unless there is anyone else seeking recognition, I'm going to indicate that we've concluded this phase—we've concluded our work, under Senate Resolution 229, in terms of the part that we could deal with at this stage. I thank all concerned.

The Committee stands in recess.

[Whereupon, at 2:27 p.m., the hearing was concluded.]

[Prepared statements and additional material supplied for the record follow:]

## PREPARED STATEMENT OF SENATOR BEN NIGHTHORSE CAMPBELL

First, I would like to congratulate the Chairman of this Committee for his leadership during these hearings. It's been a long, grueling process, and tempers have flared at times. The Chairman did a great job of trying to meet all of our wishes when he could and making sure we all behaved properly.

The full Senate charged us to do these hearings, and I've tried to keep an open mind. I didn't come in here with a political agenda, and I didn't come in here to try to nail anybody. Throughout this grueling process, I've just tried to listen to everybody, and to learn as much as possible.

After a week of "he said—she said" testimony, I am not convinced that anybody intentionally broke any rules or intentionally misled Congress. There's been a lot of conflicting testimony, I think mostly because busy people with a million things on their minds just aren't going to remember everything. I know that I can't remember everything. I am certainly not going to pass judgment on somebody and destroy their reputation on the basis of a twenty-something diary.

I am not a lawyer, and I am not an ethics expert. Three separate and independent investigations by experts in law and ethics already determined that nobody did anything to obstruct an investigation or influence a decision regarding the Madison Guaranty or Whitewater cases. These investigations, at least so far, found no broken laws, no ethics violations, no interference of any kind in normal regulatory or judicial decisions. I have to accept those judgments.

That leaves me with the questions whether anybody had such bad judgment that it affected their jobs or the public trust. In this regard, it's pretty obvious there were some real lapses of common sense.

I agree with everybody else on the Committee that Roger Altman should have recused himself immediately from this case. I don't think anybody lied to Congress, but I think Altman, Treasury ethics officers, White House personnel, and everybody else were deceiving themselves if they thought that Altman could make a completely impartial decision about the Madison case, or that anybody would believe him if he said he "de facto" recused himself. I can't imagine what would happen if Roger Altman decided to file suit against the Clintons, and then tried to continue to work closely with Hillary Rodham Clinton on health care.

Regardless of whether anybody tried to mislead this Committee, it seems to me that officials at the Treasury Department did not make immediate and full correction of the record their first and highest priority. I hope every Administration official realizes now that Congress takes that responsibility extremely seriously.

We also have identified some serious problems to solve. The RTC probably still suffers from damaging leaks to press and from sloppy handling of confidential information. We need to send a clear message that anybody caught passing along such confidential information to the press will be punished to the fullest extent of the law. Also, it is abundantly clear that a political appointee cannot double as the head of an independent or investigative agency; the inherent conflicts are just too important to ignore.

We're going to have to grapple with ethics guidelines as well. It's obvious that everybody involved, from the wonder kids like Joshua Steiner to the seasoned veterans like Jack DeVore, felt it was their duty to protect their bosses from unsuspected press inquiries. I agree that White House officials have a right and a responsibility to warn the President of such potentially upsetting press leaks. They also needed to clearly tell the President that there was nothing he could say or do about it, since the subject involved an ongoing criminal investigation.

One thing about the witnesses at these hearings really disturbs me. I said earlier that I can't expect people to remember everything. From the number of "I don't recall" I heard this week, though, I might think this Administration suffers from collective Alzheimer's disease.

As Senator Sarbanes' masterful dissection of Josh Steiner's testimony made it clear, too many people played too many word games with this Committee. Maybe they felt they could outwit the Senators on the Committee by telling the truth but not say anything. To me, those word games do a disservice to this Administration. Instead of inspiring confidence, they only serve to increase the American people's distrust of Government, and congressional distrust of the Clinton Administration. I hope that every Administration leader from President Clinton on down makes it clear that honesty is the best policy.

The White House has taken actions to better control the flow of information. Lloyd Cutler said that in the future, all contacts regarding legal investigations will have to go through the White House Counsel's office. Maybe that will help, but it seems to me that this whole Madison/Whitewater thing got started last year precisely because of the White House Counsel. I know we have a lawyer for the Presi-

dent and for the First Lady, but I don't want lawyers to be the only people in the White House who can talk to anybody.

Without excusing his failure in judgment regarding Altman's recusal, I share some of Bernard Nussbaum's sentiment about the responsibility of Government officials. Public officials should not avoid their responsibilities simply because they are difficult, or inconvenient, or because the officials find it personally or politically expedient to step aside. Put another way, if you can't take the heat, get out of the kitchen.

There was so much talk about appearances last night. I remember the old phrase, beauty is in the eyes of the beholder. How are we going to determine what looks good and what doesn't, by party-line vote every time there is a question? I thought we wanted to avoid this type of political game by setting up detailed ethics guidelines and establishing independent ethics counselors.

It seems to me that too many people refuse to do their jobs, or recuse themselves, just because they're worried about taking heat from the public, or taking heat from a U.S. Senator. If people are afraid to act because they're afraid to take the heat, then who's left to do the job? Who's left to take responsibility?

I might also add as an observation that I think it was unconscionable to subject witnesses to endless hours of non-stop interrogation, which often didn't even involve questions but rather badgering, ridiculing, and otherwise abusing the witnesses. We should be ashamed of ourselves, me included, for allowing that to happen. This is a Committee hearing, not a trial, not a police interrogation—some of us forgot that during this week. I don't know what kind of example we set, but I imagine any young person who watched these hearings will stay far away from a job in the public sector, depriving our Government of much-needed new blood and leadership.

Finally, I would urge all my colleagues to publicly repudiate the crazy conspiracy theories promoted by sick people about Vincent Foster's death. For the sake of Vince Foster and his family, this matter must be laid to rest.

---

#### PREPARED STATEMENT OF SENATOR CAROL MOSELEY-BRAUN

In the last few weeks, and over the last 6 very long days, the Senate Banking Committee has heard 25 witnesses in public session, conducted 37 depositions, and reviewed over 10,000 pages of documents. That work, however, does not end this Committee's responsibilities. Senate Resolution 229 requires the Committee to "make such findings of fact as are warranted and appropriate" and to "make such recommendations, including recommendations for new legislation and amendments to existing laws and any administrative or other actions as the Committee may determine to be necessary or desirable."

There are many difficult issues before us; they require our careful and deliberate consideration. There are, however, some preliminary conclusions that it are appropriate to make at this time. Most importantly, based on this Committee's extensive review, the hearings held by the House of Representatives, and the review by Special Counsel Fiske, I think it is possible to state without any reservation that the President of the United States, acting as President, has done absolutely nothing to interfere with any civil or criminal investigation of Madison or Whitewater. In fact, I think it is worth reiterating that it is only because the President twice signed legislation extending the statute of limitations for RTC civil investigations that there is even any opportunity for possible civil litigation to be filed with respect to Madison.

Having said that, however, I also think it is beyond dispute that this matter was not handled well. I think that Mr. Altman's two jobs were a major source of confusion and problems, and I share the view expressed by Mr. Cutler that we need to change the Vacancy Act to ensure that it never happens again. While I understand the situation that caused Mr. Altman to become the interim CEO of the RTC in the first place, his RTC responsibilities clearly created a troubling situation, both for the RTC and for the Treasury Department where Mr. Altman serves as Deputy Secretary.

The law prohibits the Oversight Board, headed by Treasury Secretary Bentsen, from becoming involved in case-specific RTC matters. Yet, Mr. Altman, who himself describes his job as, in no small part, acting as Secretary Bentsen's "alter ego," had case specific responsibilities in his role as interim CEO of the RTC, including the responsibility to approve any RTC-initiated civil litigation.

The situation Mr. Altman was in demanded great care, and extreme sensitivity to the potential conflicts in his dual roles. The situation, however, did not get that extra care and sensitivity. Instead, Mr. Altman involved a number of senior Treas-

ury officials in RTC matters, including Jean Hanson, the General Counsel of the Treasury Department. Senior RTC officials saw her acting for a time as a kind of "de facto" RTC General Counsel. Ms. Hanson, herself, while acknowledging her work on RTC matters, always saw herself as a Treasury employee, yet it was her RTC work that put her in possession of information that neither she or Mr. Altman would have obtained as officials of the Treasury Department.

Ms. Hanson, either at Mr. Altman's instruction, or on her own, transmitted information regarding criminal referrals that involved Madison Guaranty, and which named the Clintons as witnesses, information she had received because of her RTC work, to then-White House Counsel, Bernard Nussbaum. The issues of whether it was proper for her to give the White House that kind of "heads up;" how much information would it be proper to provide; and who would it be proper to give that information to, deserve very close analysis. Our judgments on these matters will affect much more than the matter now before us; our report and recommendations will affect future White House officials and future Presidents, and, therefore, need to be considered with great care.

Similar care needs to go into the analysis of the statute of limitations discussion, and the recusal issue. However, I must say that I think Mr. Altman was correct when he said that it would have been much better if he had provided any briefing to white House officials that was similar to the briefing information he gave some Members of Congress, covering publicly available information on the civil statute of limitations procedural options, in writing, rather than in person.

As to recusal, I have to say that I think Mr. Altman made the wrong decision after the February 2nd meeting, and that Mr. Nussbaum and others at that meeting gave him the wrong advice. Given the confusion caused by Mr. Altman's two hats, interim RTC CEO and Deputy Treasury Secretary, given the prominent role Mr. Altman was playing in the Administration on economic policy, on health care, and on other issues, given his friendship with the President, and given the fact that the Clintons' name appeared in the criminal referral, albeit as a witness, I would have hoped that Mr. Altman would have concluded that the applicable ethics standard required his recusal.

That standard says, in part that recusal is necessary in situations where "participation in the matter will result in an actual conflict, including an ability to act impartially, or will result in an appearance of conflict **significantly detrimental to the public's legitimate perception of the fairness of the governmental processes involved.**"

I think that standard demanded Mr. Altman's recusal. I think that is what he should have decided to do, and, whether the written ethics rules required recusal or not, I think that is what basic, common-sense, American ethics required of him. I think Mr. Altman's original inclination, when he came into the February 2nd meeting was the correct one. I think he should not have gotten that kind of bad advice from senior White House officials, and I strongly believe that he should not have taken it, even for the relatively brief period that he did.

I also have to say that it is my view that there were too many people involved, at the White House, and at the Treasury, involved in this matter. There were too many meetings, too many phone calls, and too much bad advice.

Mr. Altman is no longer interim CEO of the RTC, so the "two hats" conflict no longer exists. However, that is not the end of the matter. Secretary Bentsen, White House Counsel Lloyd Cutler, and the OGE all agree that improvements in policies and procedures are needed. It is important to note that Special Counsel Fiske has concluded that the evidence does not justify prosecuting *any* White House, Treasury, or RTC official for either attempting to obstruct any RTC investigation of Madison, or for violating "any other Federal statute." It is also important to note that the OGE review and other ethics reviews found no ethics violations by any of the officials involved in this matter. However, those facts do not demonstrate that reform is not needed. It is clear that reforms in policies and procedures are needed—and I intend to work with the other Members of this Committee, with Secretary Bentsen and the White House to see that the needed reforms in policies and procedures are implemented.

Civil and criminal investigations are serious matters. The confidentiality and independence of these processes must be preserved, and public must be assured that confidentiality and independence will be maintained in every situation, no matter who is involved.

Let me turn for a moment to the issue of Mr. Altman's testimony before this Committee. I take Mr. Altman at his word when he says he did not intend to mislead Senator Gramm, Senator Bond, or any of the other Senators who asked about meetings or other contacts regarding Madison, and what happened at those meetings or contacts. However, I must also say that I do not agree with his analysis that recusal



did not relate to the investigation of Madison. In my view, and I believe, in the view of every Member of this Committee, recusal was related to the Madison matter, and I believe that is why a number of Members of this Committee feel misled.

The responsibility for the problems involving Mr. Altman's testimony are not his alone, however. I think the General Counsel of the Treasury, Ms. Hanson, had a responsibility to clarify the record, a responsibility she did not meet. And I think the White House staff, even though the staff knew of the problem, did not work quickly enough or effectively enough to see that the problem was resolved quickly—or indeed, at all.

There are a number of other issues that we have been reviewing for the last week, including the hiring of Mr. Stephens by the RTC, and others. I will not take the time of the Committee to review all of these other matters now. Instead, I would like to conclude with a few simple points.

First, it is worth noting that these hearings have covered a large part of the issues that relate to the conduct of the President as President, as it relates to Madison/Whitewater, and to the way his Administration has handled this matter. While it is true that the Committee has not reviewed the matters involving the criminal referrals that are now properly before the Independent Counsel, these matters do not involve actions the President took as President, but actions that occurred many years ago.

Second, it is important to remember that nothing was done to impede the course of any investigation by the RTC. The criminal referrals are now before the Independent Counsel. The RTC is continuing its investigation of the civil matters. Jay Stephens is on the job. Nothing was delayed. Nothing was narrowed. Nothing was dropped.

Third, Madison, as I have stated before, represents less than 5/100ths of 1 percent of the overall losses to the American taxpayers resulting from the savings and loan debacle. Our oversight in this situation has been very vigorous. Given that the American taxpayers have lost over \$100 billion of their hard-earned money, our oversight of the entire savings and loan situation needs to be equally vigorous. I hope this Committee, therefore, will soon schedule hearings on how the RTC is doing in prosecuting civil claims and criminal referrals with respect to savings and loans whose failures were billion dollar plus events. The American public justifiably wants to see that fraud is vigorously prosecuted, that all civil claims are vigorously pursued, and that when the Government wins a judgment, it actually collects the money. I think we need to do more to ensure that the RTC treats this as a real priority, and I think we need to ensure that, since the RTC will soon go out of business, that no claims or investigations will suffer because of that fact. So far, we have only collected about 3.5 percent of over \$100 billion in losses the officers, directors, and other insiders of failed savings and loans cost the American taxpayer. If we devote the same kind of effort to improving this record as we are to the matter now before us, we will no doubt do better than that.

This is not to minimize the importance of the matters we are now reviewing. We have a clear, ongoing duty to oversee whether the machinery of Government is misused, and, in particular, on this occasion, whether it was misused in the Madison case. I think we have a fairly definitive answer as to the matters that have been examined within the course of these hearings—it may have been mishandled, but it was not misused. I agree with Mr. Cutler's conclusions.

The problem, of course, is that the inquiry is not finished. There are still unanswered questions that await the conclusion of all of the investigatory work surrounding the Madison/Whitewater matter. But these hearings have served to remove the clouds and shed the light of full disclosure on *this part* of the issue. In that, we have done a public service. Ensuring public confidence in the Presidency is critically important, and that makes all of this time well worth it.

Finally, I want to reiterate what I said at the outset of these hearings. I said then, that while the public has every right to expect that the public's business is conducted ethically, it also has every right to expect that the public's business is in fact conducted.

The public does not expect honest, ethical Government at the expense good, responsive Government. It justifiably wants both—and I think it is entitled to both. It seems to me, therefore, that as we consider the reforms that may be needed, we need to make sure that reform does not prevent the kind of effective, accountable Government that we absolutely must have. We must prevent future situations of the kind we have been reviewing here from arising again, and we must do so in a way that does not hamstring the President—the one official in the Executive Branch who is directly accountable to the public—from acting to serve the public interest.

## PREPARED STATEMENT OF SENATOR ORRIN G. HATCH

I would first like to compliment Chairman Riegle on the exemplary way he has conducted this hearing and the investigation that preceded it. Both he and Senator D'Amato deserve great credit for working together in a bipartisan manner to try to learn what really happened between the White House and the Resolution Trust Corporation with respect to the Madison Guaranty matter.

I also want to thank the Special Chief Counsels for each side, William Codinha and Michael Chertoff, who took time off from private practice to assist this Committee. They have done truly superb work under a grueling schedule. It is a testament to their efforts—assisted, of course, by our able staffs—that this Committee uncovered, and pieced together, far more in 5 weeks than Special Counsel Robert Fiske achieved in 6 months.

I am confident that informed observers will recognize that this Committee has provided the most comprehensive account of White House/Treasury Department/RTC communications relating to the Madison Guaranty matter. Let me focus, as I did during the hearing, on one series of these communications that I find particularly disturbing.

In my view, the record is clear that senior White House officials were intensely interested in who at the RTC would be making decisions in the Madison Guaranty matter. It is further clear that these senior White House officials took a series of steps that had the apparent purpose and clear effect of making the Treasury Department and the RTC acutely aware of the White House's interest.

From the moment on February 2, 1994, that Roger Altman first informed the White House that he planned to recuse himself from the Madison Guaranty matter because of his personal friendship with the President, then-White House Counsel, Bernard Nussbaum, and others applied intense pressure to Mr. Altman to change his mind. Mr. Nussbaum was particularly concerned that if Mr. Altman recused himself, RTC General Counsel, Ellen Kulka—who had been hired by Mr. Altman—would be the major decisionmaker in the Madison Guaranty matter. Mr. Nussbaum's concern about Ms. Kulka was that she might be too tough. Mr. Nussbaum not only conveyed this concern to Mr. Altman and to Jean Hanson; he also recommended to them that they consider turning the RTC's civil investigation over to Special Counsel Fiske.

The White House's interest in who at the RTC would be making the decisions in the Madison Guaranty matter intensified after Mr. Altman finally recused himself on February 25, 1994. The February 28, 1994, memorandum from Associate White House Counsel, Neil Eggleston, to Deputy Chief of Staff, Harold Ickes, points out that unless the person to be nominated to head the RTC declines to recuse himself from the Madison Guaranty matter, Jack Ryan and Ellen Kulka will decide the matter. This memorandum pointedly observes that both Jack Ryan and Ellen Kulka are "career officials"—that is, there is no reason to expect them to be especially beholden to the White House.

Also, in response to Mr. Altman's recusal, Joshua Steiner echoed ideas and sentiments expressed by senior White House officials when he suggested to Jean Hanson that Special Counsel Fiske might take over the RTC's investigation of Madison Guaranty and when he suggested to Jean Hanson that Ellen Kulka be fired for hiring Jay Stephens.

It is in this context of ongoing efforts by the White House to influence who would decide the Madison Guaranty case that the attempt by George Stephanopoulos to have the RTC "get rid of" Jay Stephens must be understood. Let me emphasize that three independent, highly reliable, and mutually corroborating pieces of evidence establish that Mr. Stephanopoulos in fact did try to have the RTC fire Jay Stephens. To summarize:

1. Joshua Steiner wrote in his diary that on February 25, 1994, "George then suggested to me that we needed to find a way to get rid of him [Jay Stephens]."

2. Roger Altman testified under oath before this Committee that his reaction to his telephone conversation with George Stephanopoulos and Harold Ickes on February 25, 1994, was that they must be crazy to try to fire Jay Stephens.

3. Jean Hanson testified under oath before this Committee that Joshua Steiner told her that people at the White House wanted to see if they could get rid of Jay Stephens.

In the face of this strong evidence, we have only Mr. Stephanopoulos' assertion that he doesn't have any recollection of trying to have Jay Stephens fired. In short, we are forced to conclude *either* that there is some sort of bizarre conspiracy under which Joshua Steiner was lying to his diary and Jean Hanson and Roger Altman have lied to this Committee on this particular issue in which they have no self-inter-

est, or we must conclude that Mr. Stephanopoulos has not been fully candid with this Committee.

I hasten to add that I can fully understand why Mr. Stephanopoulos and others in the White House would be concerned by the RTC's hiring of Jay Stephens. I can understand as well how someone in Mr. Stephanopoulos' position might even make efforts to get rid of Mr. Stephens. Indeed, had Mr. Stephanopoulos given us a forthright account of what happened, I expect that I would have found his actions to be the excusable errors of a hard-working young man who momentarily gave in to his partisan loyalties. But his dissembling before this Committee instead aggravates his original mistake.

I would finally like to emphasize the very limited scope of this hearing. Numerous matters bearing on actions taken by the present Administration remain to be examined—including, for example, actions taken by the Department of Justice and by Paula Casey, the U.S. Attorney in Little Rock, in handling the Madison Guaranty criminal referrals. I believe that this hearing proves the usefulness, indeed, the necessity, of Senate oversight of these matters.

Finally, Mr. Chairman, let me thank you for permitting me to serve as an ad hoc Member of this Committee for purposes of this hearing.

---

### **PREPARED STATEMENT OF LLOYD N. CUTLER**

**SPECIAL COUNSEL TO THE PRESIDENT, WASHINGTON, DC**

**BEFORE THE U.S. SENATE**

**COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS**

**AUGUST 5, 1994**

Mr. Chairman and Members of the Committee, my name is Lloyd Cutler. Since March 10, 1994, I have held the position of Special Counsel to the President. Since April 4, 1994, I have been performing the duties of the Counsel to the President.

When I came aboard, White House Chief of Staff, Mack McLarty, asked me to undertake a review of the so-called Treasury-White House contacts. The results of that review are set forth at length in my written statement before the House Banking Committee on July 26, 1994. A copy of that statement is attached to my statement here today. I will summarize the main points.

President Clinton has directed me and the White House staff to cooperate fully and openly both with the investigation of Independent Counsel Robert Fiske and with the oversight Committees of the Congress. We have done so, and we appreciate the Chairman's recognition of our cooperation yesterday. Although Presidents have traditionally been very sparing in allowing White House aides to testify before Congress, President Clinton has waived executive privilege as to this inquiry, and no White House staff witness has refused to appear. We have produced thousands of pages of documents requested by the Committees. We recognize the right of Congress to conduct this inquiry, and we take it very seriously.

As you know, Independent Counsel Robert Fiske has interviewed, deposed, or taken before the Grand Jury every Treasury and White House official involved. Mr. Fiske concluded that there was no basis for a criminal prosecution under the ethics laws or other laws as to any of the Treasury or White House officials who took part in these contacts. He expressed no opinion on whether these contacts involved any violation of any noncriminal ethical standards or gave rise to any other concerns. As to the White House staff members, those are the questions Chief of Staff, Mack McLarty, asked me to review when I returned to the Counsel's Office, and the results of that review are covered in this statement.

As you also know, the Office of Government Ethics has now reviewed the factual findings of the Treasury Inspector General and has issued its formal opinion concurring that no violation of any ethical standard occurred by any current Treasury or RTC official. I have reached the same conclusion as to the White House officials, and based on the facts as I reported them, the Office of Government Ethics has informally concurred. But the contacts did have some troubling aspects, on the White House side as well as the Treasury side.

#### **Mr. Altman's Recusal**

One of these is a subject which has occupied much of this Committee's hearings, namely Mr. Altman's recusal. As you know, the Office of Government Ethics had concurred with the determination of the Treasury and RTC ethics officials in Feb-

ruary 1994 that Mr. Altman had no legal obligation to recuse himself from Madison Guaranty/Whitewater matters, and that a decision on whether or not to recuse lay within his personal discretion. The Office of Government Ethics has also informally confirmed my conclusion that no White House official violated any ethical standard with respect to the recusal issue.

However, Mr. Nussbaum's statements plainly suggested his preference that Mr. Altman not recuse himself in the circumstances, and Mr. Altman may have so understood him. This may have influenced Mr. Altman's decision on February 3, 1994, to defer recusal. Even though this did not, in my opinion or that of the Office of Government Ethics, violate any ethical standard, there is a broader question as to whether it was appropriate for any White House staff member to make this preference known to Mr. Altman.

The answer to that question seems clearer when viewed in hindsight than it may have appeared to be at the time. I am sure that everyone concerned acted in good faith. As several Members of the Committee have noted, there are good reasons for not recusing when there is no legal or ethical duty to do so. But in my judgment, Mr. Altman should have decided the question without discussing it with the White House. And once the question was raised with the White House on February 2, 1994, I believe that in the light of all the factual and political circumstances relating to Madison Guaranty and Whitewater, if the White House were to express any opinion at all, it should have encouraged Mr. Altman to recuse himself immediately.

But even though Mr. Altman did not finally recuse himself until February 25, 1994, none of the Treasury-White House contacts resulted in actions being taken to influence the ongoing investigations of Madison Guaranty. The record of this hearing, as well as my own review and the review undertaken and supervised by the Office of Government Ethics, establish these facts:

- First, before Mr. Altman recused himself, Mr. Altman did not participate in the RTC decision to make the criminal referrals or any other RTC decision relating to a particular Madison Guaranty/Whitewater matter, and he made it clear to the nonpolitical RTC officials that he would not do so.
- Second, the nonpolitical RTC officials who have testified before you confirmed that no one in the Treasury or the White House brought any pressure to bear on them, and that all of the RTC's decisions relating to Madison Guaranty were made by the career staff.
- Third, before Mr. Altman recused himself, the criminal referrals went forward to the Department of Justice.
- Fourth, the statute of limitations on Madison-related claims was extended by Congress and signed into law by the President.
- Fifth, also before Mr. Altman's recusal, the President's political critic, Jay Stephens, was retained to pursue possible civil claims. Mr. Stephens is still on the job.

Nothing happened—I repeat nothing happened—to influence the criminal or civil inquiries or stop them from going forward.

### **The Propriety of the “Heads-Up”**

Next, I want to turn to another subject that the Committee has debated—whether it is unusual or unethical for an agency with law enforcement responsibilities to give the White House a “heads-up” when a criminal investigation is launched involving a high Government official or the President himself. I testified to the House Committee that in my opinion such a heads-up is both customary and ethical, so long as the heads-up is not misused to influence the outcome of the inquiry. My reasons are set forth in an op-ed article in last Wednesday's *Washington Post*. A copy of that article is attached, and I will be glad to answer questions about it, and how we can devise rules to make sure that no such “heads-up” will be misused.

### **Corrective Measures**

Mr. Chairman, there was another troubling aspect of the contacts, and that is the somewhat loose and impromptu manner in which they took place. I have said that while the various Treasury-White House contacts violated no ethical standard, in my judgment it would have been better if some of these contacts had never occurred, and if fewer White House staff members had participated. When I reviewed these incidents in their totality, I found there were too many people having too many discussions about too many sensitive matters—matters which were properly the province of the Office of the White House Counsel. The contacts were not sufficiently channeled between White House Counsel and Treasury Counsel, and there were too many conversations in which no counsel participated. In retrospect, we did not meet as high a performance standard as we should have set for ourselves. We have therefore taken additional measures to assure that future contacts between the White

House and Executive Branch agencies with law enforcement functions will be beyond reasonable challenge.

First, in March 1994 we reminded everyone on the White House staff of the rule that no such contacts relating to a particular law enforcement investigation may be initiated without the prior approval of the White House Counsel. Some of the Treasury-White House contacts were initiated or permitted by White House staff members without the prior approval of the Counsel, even though Counsel's memoranda requiring prior approval have been in effect since February 1993. We need to make these reminders more pointed and more frequent.

Second, as a result of my review, we have concluded that contacts relating to a specific law enforcement investigation by staff members other than those in the White House Counsel's Office are inadvisable even with the approval of the White House Counsel, and that in the future all such contacts should be between the White House Counsel (or Deputy) and the General Counsel (or Deputy) of the agency involved. These are the understandings already in place with the Attorney General and her Deputy, and we plan to extend them to other Executive Branch agencies with law enforcement functions as well.

Third, we are drafting rules of conduct for future contacts, including "heads-up" contacts, between the Office of the White House Counsel and Executive Branch agencies with law enforcement functions on particular investigative matters, especially those involving high-ranking Government officials, defining the circumstances under which such contacts are appropriate or not. We recognize that clean lines of demarcation will be difficult to draw, and that in particular cases judgment and discretion will have to be applied. We will review these drafts with the law enforcement agencies, and we hope to issue them promptly. We would also be happy to discuss them with the appropriate Committees of Congress.

In conclusion, Mr. Chairman, some mistakes were undoubtedly made in the course of providing the White House with the information the President needed to perform his constitutional duties effectively. With your help we have taken and will continue to take the steps necessary to improve that process.

But let us remember: The primary issue raised in these hearings is whether the machinery of Government was misused by the White House to influence the outcome of a law enforcement inquiry in its own favor. The evidence shows unequivocally that this did not occur. After thorough investigations by Independent Counsel Fiske, by the Treasury and RTC Inspectors General, the White House Counsel's Office, the Office of Government Ethics, and the Senate and House Banking Committees, we now know that no White House or Treasury official took any action to stop or slow any criminal or civil proceeding involving Madison Guaranty. The machinery of Government has not been misused.

As these hearings draw to a close, I hope the Congress and the Administration can return to their primary responsibilities—working together to govern decisively, fairly, and for the benefit of all the people.

### **Vince Foster's Death**

With your permission, Mr. Chairman, let me add a word about your hearing last Friday concerning Mr. Fiske's report on Mr. Vincent Foster's death. Mr. Foster was a childhood friend of the President and admired by numerous members of the White House staff. Although I knew him only slightly, I am told he was hard-working, deeply intelligent, a good colleague, and a treasured member of the White House "family." To the people who knew him, his death was unexpected and devastating. On the day he died, a curtain of sadness descended upon the White House.

On June 30, 1994, Mr. Fiske published a thorough and voluminous report of his findings concerning Mr. Foster's death. I believe that report proves beyond reasonable doubt that Mr. Foster's death was indeed a suicide that occurred in Fort Marcy Park, as originally reported by the Park Police. According to Mr. Fiske, "the evidence overwhelmingly supports this conclusion, and there is no evidence to the contrary."

Mr. Fiske's report also stated that his team "found no evidence that issues involving Whitewater, Madison Guaranty, CMS, or other personal legal matters of the President or Mrs. Clinton were a factor in Foster's suicide." Since these Whitewater/Madison Guaranty matters are the main reason for this Committee's hearings, and Mr. Foster's death has been found to be unrelated to these matters, we hope that the Committee will accept Mr. Fiske's report without chasing down every new question that conspiracy theorists will always raise about the violent death of any prominent person.

Even *The Wall Street Journal's* editorial page—one of Mr. Foster's most persistent critics—has accepted the findings of the Fiske Report. After a year of lurid, person-

ally invasive, and totally unsubstantiated speculations, surely it is time for decent people to leave Mr. Foster's bereaved family in peace.

In a statement they released 10 days ago, the Foster family wrote: "We love Vince and miss him terribly. He was an honorable man and deserves to be treated with respect. On this anniversary of his death, our fervent hope is that this matter now will recede from public view and that the family will be left alone to deal with its loss in private." That is their wish. Let it be ours, as well.

Thank you, Mr. Chairman and Members of the Committee.

---

## **PREPARED STATEMENT OF LLOYD N. CUTLER**

**SPECIAL COUNSEL TO THE PRESIDENT, WASHINGTON, DC**

**BEFORE THE U.S. HOUSE OF REPRESENTATIVES**

**COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS**

**JULY 26, 1994**

Mr. Chairman and Members of the Committee, my name is Lloyd Cutler. Since March 10, 1994, I have been Special Counsel to the President. Since the beginning of April, when Mr. Bernard Nussbaum's resignation became effective, I have been performing the duties of Counsel to the President. I had previously held this position under President Carter, and in 1989 I was a member of President Bush's Commission on Federal Ethics Law Reform.

I am here today to present the White House position on the ethical propriety of certain White House contacts with Treasury officials concerning the Resolution Trust Corporation's inquiries into a failed savings and loan called Madison Guaranty.

President Clinton has directed me and the White House staff to cooperate fully and openly both with the investigation of Independent Counsel Robert Fiske and with the oversight Committees of the Congress. We have done so. No White House staff witness has refused to appear. We have produced thousands of pages of documents requested by the Committees. We appreciate the Chairman's statement that we have cooperated fully. We recognize the right of Congress to conduct this inquiry, and we take it very seriously.

In our system, the President and Congress must cooperate on smaller as well as larger matters. We are opening these Madison Guaranty/Whitewater hearings on the very same day that Prime Minister Rabin of Israel and King Hussein of Jordan will address a joint session of Congress, one day after signing the Declaration of Washington with the President as witness, outlining the principles for a treaty of peace between their countries. There could be no more profound demonstration of how diligently the Congress and the President can work together to make the national Government as open and productive as we can.

### **The Treasury-White House Contacts**

As you know, Independent Counsel Robert Fiske has interviewed, deposed, or taken before the Grand Jury every Treasury and White House official involved in the so-called Treasury-White House contacts during the period September 1993 through February 1994. These contacts originated in the fall of 1993, at the time the RTC reportedly made a number of criminal referrals to the Department of Justice of various matters involving a failed S&L called Madison Guaranty. A criminal referral is a recommendation that the Department consider undertaking an investigation and, if the evidence warrants, bringing a criminal charge against one or more persons; the final decision, of course, is up to the Department. According to press reports, these referrals apparently mentioned, among other matters, a 1978 joint real estate venture called Whitewater between the Chairman of Madison Guaranty (Mr. James McDougal) and President and Mrs. Clinton, as well as some campaign contributions to a Clinton gubernatorial campaign.

As you also know, Mr. Fiske concluded that there was no basis for a criminal prosecution under the ethics laws or other laws as to any of the Treasury or White House officials who took part in these contacts. He expressed no opinion on whether these contacts involved any violation of any noncriminal ethical standards or gave rise to any other concerns. As to the White House staff members, those are the questions Chief of Staff, Mack McLarty, asked me to review when I returned to the Counsel's Office, and the results of that review are covered in this statement.

In summary, I have concluded there was no violation of any ethical standard, but that it would have been better if some of the issues that arose had been handled differently than they were. I have also recommended measures to assure that future contacts between the White House and Executive Branch agencies with law enforcement responsibilities will be beyond reasonable challenge.

Before discussing the Treasury-White House contacts and the ethical questions they present, I want to stress that nothing happened as a result of these contacts. No White House staff member made any effort to change any decision by the RTC and no decision by the RTC was changed. These contacts had no impact on the real world of the RTC's activities.

Attached to this statement is a chronology of the Treasury-White House contacts that occurred from September 1993 through February 1994 and the substance of each, so far as I have been able to determine. Where the participants do not substantially agree on what was said, the chronology sets forth the principal differences. For the most part, the differences are the typical variations in recollection of different witnesses to months-old events, and they are not material to the question of whether the contacts were proper.

Let me summarize the main points of this chronology. The contacts generally fall into three time periods. The first set of contacts occurred in the fall of 1993. They began on September 29, 1993, when Treasury General Counsel, Jean Hanson, took White House Counsel, Bernard Nussbaum, aside at the end of a meeting on another subject and told him that the Clintons were mentioned incidentally in an RTC criminal referral concerning Madison Guaranty. Ms. Hanson indicated to Mr. Nussbaum that the referral was likely to be the subject of press leaks and inquiries. She said she was informing Mr. Nussbaum so that the White House would not be taken by surprise. Mr. Nussbaum asked Ms. Hanson to be in touch with his staff if there were further press developments. Over the next few weeks, Ms. Hanson spoke on a couple of occasions to lawyers in the Office of White House Counsel to report the details of continuing press inquiries. Intensifying press interest in the referrals apparently led Mr. Jack DeVore, then Treasury's Assistant Secretary for Public Affairs, to arrange a meeting with White House communications and legal staff to discuss Treasury's response to the press. This meeting occurred on October 14, 1993. As far as I have been able to determine, no White House official took any action based on the information received about the referrals other than preparing to respond to press inquiries.

The second set of contacts occurred because of the then-impending expiration (on February 28, 1994) of the statute of limitations for the RTC to file certain potential civil claims arising out of the failure of Madison Guaranty. As you may recall, Senator D'Amato was reminding the Senate daily of the shrinking period during which certain possible civil claims related to the Madison Guaranty failure could be pursued by the RTC, and RTC officials had provided a briefing on this subject to members of Senator D'Amato's staff on January 24, 1994. Mr. Roger Altman, the Deputy Secretary of the Treasury and Acting CEO of the RTC, sought a meeting with White House officials on February 2, 1994, to provide a similar briefing to the White House. Ms. Hanson accompanied Mr. Altman to the meeting. Using talking points prepared by Ms. Hanson, Mr. Altman described the various procedural options available to the RTC for preserving potential claims when the expiration of a statute of limitations was imminent.

At the same meeting, Mr. Altman also raised the issue of his possible recusal from decisions about how to proceed with respect to possible Madison-related claims potentially involving the Clintons. I will refer to this issue in greater detail later in this statement.

The third set of contacts relates to the RTC Oversight Board hearing before the Senate Banking Committee on February 24, 1994. By that time, Congress had already passed and the President had promptly signed a law extending the statute of limitations on potential RTC civil claims until December 31, 1995, when the RTC is scheduled to be wound up.

At the hearing, in response to questioning about contacts with the White House related to the Madison matter, Mr. Altman did not mention that he had raised the question of his possible recusal at the February 2, 1994, meeting. Mr. Altman also did not mention the September 29 and October 14, 1993, meetings regarding press inquiries about criminal referrals. Following the hearing, lawyers from the Office of the White House Counsel and other White House staff met to determine whether Mr. Altman's hearing testimony might require supplementation. As a result, White House Staff Secretary, John Podesta, telephoned Mr. Altman and expressed concern with Mr. Altman's omission of the fall meetings and of his possible recusal as a subject of discussion at the February 2, 1994, meeting.

The day after the hearing, *The New York Times* published a story about White House and Treasury meetings on the Madison investigation. That afternoon, Mr. Joshua Steiner, the Treasury Chief of Staff, reported to Mr. Podesta of the White House staff that Mr. Altman had just informed an editor of *The New York Times* that he had decided to recuse. This news took several at the White House by surprise and led to a series of telephone calls which I will also refer to later in this statement.

### **The Standards of Ethical Conduct**

The ethical rules applicable to Executive Branch employees are set forth in the Standards of Ethical Conduct issued by the Office of Government Ethics. Three of the standards are arguably relevant to the Treasury-White House contacts.

(1) A Standard of Conduct provides that an employee shall not participate in a matter without the prior authorization of a designated ethics official if the employee "determines that a reasonable person with knowledge of the relevant facts would question his impartiality in the matter." 2635.501 and .502. There are two reasons why this standard was not violated. First, in connection with the vast majority of the contacts, no White House official did anything that could be regarded as "participating" in the Madison Guaranty matter before the RTC, or in any other Madison Guaranty matter affecting his or her own personal interests or those of anyone else. Second, whether there may be an appearance of partiality depends in part on whether the employee has certain types of private relationships with persons interested in the matter at issue. President and Mrs. Clinton were arguably interested in some RTC actions concerning Madison Guaranty. But on the basis of my review, none of the White House staff members involved in the contacts has any of the types of financial or family relationships with President or Mrs. Clinton that would raise the issue of partiality. It is not "partiality" for Presidential aides to receive information or express opinions relating to the interests of the President for whom they work. For example, a White House staff member could receive information or express opinions about a congressional proposal to raise or lower the salary of the President without violating this standard. There is no other evidence to show that a question concerning the impartiality of any of the staff members should reasonably have arisen.

(2) An Executive Branch employee may not use his public office for the private gain of himself or his close friend, relative, or private business associate. 2635.702. Stated a slightly different way, he may not use his Government position "in a manner that is intended to coerce or induce another person . . . to provide any benefit, financial or otherwise," to himself or his close friend, relative, or private business associate. 2635.702(a). On the basis of my review, none of the staff members involved in the contacts sought private gain for himself or anyone else covered by this standard.

(3) Executive Branch employees may not use nonpublic information to further their own private interests or those of anyone else, whatever their relationship with the person. 2635.703. No White House staff member attempted to further anyone's private interests with any nonpublic information from the Treasury.

Two main ethical issues arise with respect to these events. The first is whether it violated any ethical standard, or was otherwise inappropriate, for the White House to receive a "heads-up" from a Treasury official that the RTC was making criminal referrals that made incidental mention of President and Mrs. Clinton, and thereafter for Treasury and White House officials to discuss how to respond to press leaks and queries about the matter.

The second issue relates to whether it violated any such standard, or was otherwise inappropriate, when Mr. Altman told White House officials he was considering whether he should recuse himself from participation in any Madison Guaranty matter, for White House officials to have given Mr. Altman their views about this subject.

To put these questions of propriety in perspective, one must consider the constitutional structure of the Executive Branch. The Constitution vests the entire executive power in the President alone. Congress has passed various laws redistributing that power within and outside the Executive Branch, such as the laws purporting to vest power in various Cabinet Secretaries, the laws creating various fully independent agencies like the Federal Reserve Board and the Federal Communications Commission, and the recently revived law creating the Office of Independent Counsel. But the Department of the Treasury remains wholly within the Executive Branch, and the RTC is not a fully independent agency in the same sense as the Federal Reserve and the FCC. The RTC acts under the general direction of a Chief Executive appointed by and answerable to the President, and under the general supervision of an Oversight Board which includes the Secretary of the Treasury and a number of



other Executive Branch officers directly or indirectly answerable to the President. In my view the RTC, like the Environmental Protection Agency, is an independent agency within the Executive Branch.

Of course, the constitutional role of the President as the sole holder of the executive power does not mean that the White House can properly seek to influence Executive Branch law enforcement investigations involving other high Government officials or the President himself. One reason we have an Independent Counsel law is to prevent this from happening. It would of course be inappropriate for the White House to try to influence investigations under that law. But it is entirely appropriate for the White House to receive a heads-up promptly after the Attorney General makes a decision to seek the appointment of an Independent Counsel, so that the White House will not be surprised by press questions. That has been the practice followed ever since the Independent Counsel law was enacted in 1977.

The same principles apply when high officials are directly or indirectly involved in law enforcement investigations within the jurisdiction of other Executive Branch agencies, such as the Environmental Protection Agency, the Food and Drug Administration, and the RTC. (Strictly speaking, the RTC is not a law enforcement agency, but it can make criminal referrals to the Department of Justice, and it can bring civil actions against directors, officers, and borrowers when failed savings and loans are taken over by the Government.)

The heads-up principle applies with particular force to criminal referrals by the RTC or other agencies to the Department of Justice. Because of their preliminary nature, it is the usual practice, in fairness to those involved, not to make a public announcement that such a referral has been made. I understand that the RTC and the FDIC have made more than a thousand criminal referrals to the Department, of which only a small percentage have been found meritorious enough to warrant an actual criminal prosecution.

The heads-up received by the White House that the RTC was making criminal referrals concerning Madison Guaranty did not in my opinion involve any impropriety or breach of any ethical standard by any White House official. None of them made any effort to influence the RTC's decision.

On the same reasoning, there was no impropriety or breach of any ethical standard in the meeting requested by Treasury officials and held on October 14, 1993, to discuss press leaks and inquiries to the Treasury concerning the unannounced criminal referrals and the responses to be made to these inquiries. It was obviously important and appropriate for the Treasury to inform the White House about the leaks and resulting press queries so that the White House could prepare itself and brief the Treasury to answer the questions being raised by the press concerning the Clintons' investment in Whitewater and their knowledge as to the campaign contributions raised by Mr. McDougal. In my opinion, those who participated acted in good faith and in compliance with existing ethical standards.

The Office of Government Ethics—the agency charged with interpreting and applying the Standards of Conduct—agrees that the receipt of such information by White House officials, if not then used to further their own or another's private interest, does not violate the Standards. On the basis of my review, the information was not used for such a purpose.

Let me now come to the more difficult issue of the contacts about the statute of limitations and Mr. Altman's consideration of his possible recusal, starting with the meeting on February 2, 1994. Under the RTC statute, its Chief Executive is appointed by the President by and with the advice and consent of the Senate. In March 1993, pending the selection of a nominee, the President had named Deputy Secretary of the Treasury, Roger Altman, to serve simultaneously as Acting Chief Executive of the RTC. Under applicable law, Mr. Altman could only serve as Acting Chief Executive for a maximum of 120 days, expiring during July 1993, unless by that time a nomination had been sent to the Senate for its advice and consent, in which case he could continue until the nominee took office. In July of 1993, before the 120 days expired, the President nominated Stanley Tate to the RTC post, but he ran into confirmation problems and withdrew on November 30, 1993. As a result, Mr. Altman was legally authorized to continue as Acting Chief Executive for 120 additional days after November 30, 1993, i.e. March 30, 1994.

In January 1994, there was increasing congressional interest in the status of potential civil claims relating to Madison Guaranty and Whitewater. At that time, the relevant statute of limitations on such claims was to expire on February 28, 1994, and the RTC had not yet decided whether civil claims relating to Madison Guaranty should be brought. At a meeting requested by Mr. Altman and held with White House staff members on February 2, 1994, Mr. Altman briefed the White House staff on the procedural options available to the RTC in potential cases such as Madison Guaranty where the statute of limitations was about to expire, just as the RTC

had previously briefed an interested member of Congress who had inquired about the Madison Guaranty situation.

At the same meeting, Mr. Altman also said he had been considering recusal from participation in any RTC decisions concerning Madison Guaranty, and that he had been advised to recuse by his Treasury colleagues. There is a difference of recollection among the participants as to whether Mr. Altman said he had already decided to recuse or whether he said he was still considering the matter. There is no evidence that White House personnel knew before the meeting started that Mr. Altman would raise the issue of recusal.

Mr. Bernard Nussbaum, then the White House Counsel, expressed his concern, partly because a similar question had been raised in the then-pending confirmation hearings of Ms. Ricki Tigert, President Clinton's nominee for Chairman of the FDIC. In her hearing on February 1, 1994, Ms. Tigert had been asked to make a blanket recusal in any matter potentially involving President Clinton. She had replied that she would defer any decision on recusal until a particular matter came before her and would then follow the advice of the FDIC ethics officer.

Mr. Nussbaum understood Mr. Altman to say that he had been advised he had no legal or ethical obligation to recuse, but was inclined to do so anyway. Mr. Nussbaum was convinced that an Altman recusal—in the absence of a legal or ethical requirement to do so—might undercut the position taken by Ms. Tigert. Mr. Nussbaum expressed his view that a Presidential appointee, solely because of her or his status as such, should not recuse merely because the matter tangentially involved the President. Although Mr. Altman said he would leave any Madison Guaranty decision to RTC's career officers in any event, Mr. Nussbaum said he thought these officers could be expected to act with greater fairness and professionalism if Mr. Altman did not recuse. Mr. Nussbaum also made clear that the final decision on recusal was Mr. Altman's to make.

On February 3, 1994, Mr. Altman advised the White House that he had decided not to recuse for the time being. He maintained that position until February 25, 1994 (a day after his testimony before the Senate Banking Committee) when he announced his recusal.

As you know, the Office of Government Ethics had concurred with the determination of the Treasury and RTC ethics officials in February 1994 that Mr. Altman had no legal obligation to recuse himself from Madison Guaranty/Whitewater matters, and that a decision on whether or not to recuse lay within his personal discretion. The Office of Government Ethics has now also informally confirmed that it has no reason to believe that any White House official violated any ethical standard with respect to the recusal issue.

However, Mr. Nussbaum's statements plainly suggested his preference that Mr. Altman not recuse himself in the circumstances, and Mr. Altman may have so understood him. This may have influenced Mr. Altman's decision on February 3, 1994, to defer recusal. Even though this did not in my opinion violate any ethical standard, there is a broader question as to whether it was appropriate for any White House staff member to make this preference known to Mr. Altman.

The answer to that question seems clearer when viewed in hindsight than it may have appeared to be at the time. I am sure that everyone concerned acted in good faith. But in my judgment, this discussion should not have taken place. And once the question was raised, I believe that in the light of all the factual and political circumstances relating to Madison Guaranty and Whitewater, the White House should have encouraged Mr. Altman to recuse.

However, it is important to note that during the period before Mr. Altman recused himself, Mr. Altman did not participate in the RTC decision to make the criminal referrals or any other RTC decision relating to a particular Madison Guaranty/Whitewater matter.

Let me turn briefly to whether it violated any ethical standard for White House officials to receive the February 2, 1994, briefing as to RTC's statute of limitations options. This same briefing was being given to various members of Congress, and was public information. It was in the nature of a heads-up to the White House, and no White House participant said anything that could have affected how the RTC exercised its options. Moreover, that issue was mooted 10 days later when Congress passed and the President signed the law extending the limitation period until December 31, 1995, or the winding-up of the RTC, whichever comes later. There was no discussion of the merits or substance of any possible claims relating to Madison Guaranty.

There remain the contacts that occurred on February 25, 1994, after Mr. Altman's testimony on February 24, 1994, and after he announced his decision to recuse on February 25, 1994. In the course of a telephone conversation initiated by Mr. George Stephanopoulos, Senior Advisor to the President, and Mr. Harold Ickes, the White

House Deputy Chief of Staff, with Mr. Altman, they expressed their concern that Mr. Altman had informed *The New York Times* of his recusal decision before informing the White House. However, they made no effort to persuade Mr. Altman to change his mind. In this conversation they also expressed their surprise and dismay about reports that the RTC had retained Mr. Jay Stephens and his law firm to investigate and conduct any civil litigation on behalf of the RTC relating to the same allegations as the criminal referrals. (Let me remind you that when Attorney General, Janet Reno, had replaced Mr. Stephens and other holdover U.S. attorneys earlier in the Clinton Administration, Mr. Stephens had strongly criticized the Administration, and had later considered running as a Republican candidate for the Senate. It is no exaggeration to say he was a vocal political critic of the President.) In an earlier conversation the same day between Mr. Stephanopoulos and Mr. Joshua Steiner, Secretary Bentsen's Chief of Staff, Mr. Stephanopoulos had also expressed these concerns, and questioned how Mr. Stephens could have been considered impartial and suitable for appointment. Mr. Steiner responded that it was a done deal and should not be pursued further.

In my view, the concerns expressed by Mr. Stephanopoulos and Mr. Ickes were perfectly natural under the circumstances, and involved no ethical impropriety. They made no real effort to alter what had been done, and with respect to Mr. Stephens, Mr. Stephanopoulos was simply "letting off steam." Republican observers like Mr. Marlin Fitzwater (President Bush's press secretary) and Congressman James Leach have also dismissed the incident as trivial. As in the case of the earlier contacts, the contacts concerning the retention of Mr. Stephens had no effect on his status or on the RTC's activities concerning Madison Guaranty.

Let me turn to when the President and Mrs. Clinton learned about the Treasury-White House contacts. Mr. Lindsey informed the President of the criminal referrals early in October, shortly after the initial "heads-up" from Ms. Hanson and after the press had begun inquiring into the matter. Mrs. Clinton learned about it later in October through press reports.

The President and Mrs. Clinton do not recall learning about the discussions concerning Mr. Altman's recusal until Mr. Altman announced it on February 25, 1994. Mr. Ickes recalls that at some point he briefly informed the President of the February 2, 1994, meeting and Mr. Altman's subsequent decision not to recuse. He does not recall when that discussion took place. Mr. Ickes also recalls a similar brief discussion with Mrs. Clinton.

I also want to refer to the brief conversation between the President and Comptroller of the Currency, Eugene Ludwig, on December 30, 1993, which does not even deserve to be described as a contact. They were both at Renaissance Weekend in Hilton Head, along with more than a thousand others. They had a brief exchange. Their recollections differ somewhat, but they agree the President said he wanted to have a further talk with Mr. Ludwig about the Madison Guaranty/Whitewater matter, which was then very much in the news. Mr. Ludwig called Ms. Jean Hanson, the Treasury General Counsel, for guidance. She referred him to the White House Counsel's Office, where he reached Mr. Clifford Sloan. Mr. Sloan called his colleague Mr. Neil Eggleston, who called Deputy White House Counsel, Joel Klein, who was also at Renaissance Weekend. Mr. Klein found the President and inquired about the conversation. The President said he had only wanted to get Mr. Ludwig's suggestions as to the names of experts familiar with real estate development and financing who might be willing to write articles explaining the Whitewater project to the public. Mr. Klein said it would be better to obtain such advice from someone other than the Comptroller. The President said he agreed, and would turn elsewhere. Mr. Klein so informed Mr. Ludwig.

Since the President and Mr. Ludwig never had a substantive conversation—even about the names of experts who could write articles—their brief encounter is hardly worth mentioning. It could not possibly have violated any applicable ethical standard or be considered a significant error of judgment.

Mr. Chairman, I have said that while the various Treasury-White House contacts violated no ethical standard, in my judgment it would have been better if some of these contacts had never occurred, and if fewer White House staff members had participated. When I reviewed these incidents in their totality, I found there were too many people having too many discussions about too many sensitive matters—matters which were properly the province of the Office of the White House Counsel. The contacts were not sufficiently channeled between White House Counsel and Treasury Counsel, and there were too many conversations in which no counsel participated. In retrospect, we did not meet as high a performance standard as we should have set for ourselves. We have therefore taken additional measures to assure that future contacts between the White House and Executive Branch agencies with law enforcement functions will be beyond reasonable challenge.

First, in March 1994 we reminded everyone on the White House staff of the rule that no such contacts relating to a particular law enforcement investigation may be initiated without the prior approval of the White House Counsel. Some of the Treasury-White House contacts were initiated or permitted by White House staff members without the prior approval of the Counsel, even though Counsel's memoranda requiring prior approval have been in effect since February 1993.

Second, as a result of my review, we have concluded that such contacts by staff members other than those in the White House Counsel's Office are inadvisable even with the approval of the White House Counsel, and that in the future all such contacts should be solely between White House Counsel (or Deputy) and the General Counsel (or Deputy) of the agency involved. These are the understandings already in place with the Attorney General and her Deputy, and we plan to extend them to other agencies as well.

Third, we are drafting rules of conduct for future contacts between the Office of the White House Counsel and Executive Branch agencies with law enforcement functions on particular investigative matters, defining the circumstances under which such contacts are appropriate or not. We will review these drafts with the agencies, and we plan to issue them promptly.

Finally, I want to point out again that none of the Treasury-White House contacts I have described had the slightest effect on the RTC's activities concerning Madison Guaranty to date, and to pledge that no such effects will be tolerated in the future.

### **The Fiske Report on Mr. Vincent Foster's Death**

With your permission, Mr. Chairman, let me add a word about Mr. Fiske's report on Mr. Vincent Foster's death. Mr. Foster was a childhood friend of the President and admired by numerous members of the White House staff. Although I knew him only slightly, I am told he was hard-working, deeply intelligent, a good colleague, and a treasured member of the White House "family." To the people who knew him, his death was unexpected and devastating. On the day he died, a curtain of sadness descended upon the White House.

On June 30, 1994, Mr. Fiske published a thorough and voluminous report of his findings concerning Mr. Foster's death. I believe that report proves beyond reasonable doubt that Mr. Foster's death was indeed a suicide that occurred in Fort Marcy Park, as originally reported by the Park Police. According to Mr. Fiske, "the evidence overwhelmingly supports this conclusion, and there is no evidence to the contrary."

Mr. Fiske's report also stated that his team "found no evidence that issues involving Whitewater, Madison Guaranty, CMS, or other personal legal matters of the President or Mrs. Clinton were a factor in Foster's suicide." Since these Whitewater/Madison Guaranty matters are the main reason for this Committee's hearings, and Mr. Foster's death has been found to be unrelated to these matters, we hope that all Members of the Committee will accept Mr. Fiske's report without chasing down every new question that conspiracy theorists will always raise about the violent death of any prominent person.

Even *The Wall Street Journal's* editorial page—one of Mr. Foster's most persistent critics—has accepted the findings of the Fiske Report. After a year of lurid, personally invasive, and totally unsubstantiated speculations, surely it is time for decent people to leave Mr. Foster's bereaved family in peace.

I had hoped this thorough report would put to rest the wild rumors that Mr. Foster was murdered or committed suicide at another location, and that his dead body was then moved to Fort Marcy, as well as all the other innuendoes and speculations that have been circulated by mere gossips, by irresponsible journalists, and by persons who would harm the President and torment Mr. Foster's family to advance their political goals. It, unfortunately, has not.

So, I would ask those rumormongers to heed the words of Vince Foster's family. In a statement they released 7 days ago, the Foster family wrote: "We love Vince and miss him terribly. He was an honorable man and deserves to be treated with respect. On this anniversary of his death, our fervent hope is that this matter now will recede from public view and that the family will be left alone to deal with its loss in private." That is their wish. Let it be ours, as well.

Thank you, Mr. Chairman and Members of the Committee.

## ATTACHMENT

CHRONOLOGY OF CONTACTS BETWEEN  
THE WHITE HOUSE AND TREASURY OFFICIALS ON THE SUBJECT OF THE  
RTC INVESTIGATION OF MADISON GUARANTY SAVINGS & LOAN

The following is a narrative description of the contacts between White House and Treasury officials in connection with the RTC investigation of Madison Guaranty Savings & Loan. This description is based on an internal review undertaken by the Office of White House Counsel.

**Contacts Relating to RTC Criminal Referrals**

On September 29, 1993, Ms. Jean Hanson, General Counsel of the Department of Treasury, participated in a meeting of Treasury officials reporting to Mr. Bernard Nussbaum, Counsel to the President, on the investigation of the Waco matter. After the Waco meeting, Ms. Hanson told Mr. Nussbaum of an RTC criminal referral involving Madison Guaranty that incidentally mentioned the Clintons and the Clinton for Governor Campaign. Ms. Hanson said she was reporting this information to Mr. Nussbaum because she expected press leaks and did not want the White House to be taken by surprise. Ms. Hanson also told Mr. Nussbaum that Mr. Roger Altman, then the Acting Chief Executive Officer of the RTC, had previously sent him some materials relating to the subject, but Mr. Nussbaum had no recollection of this. Mr. Nussbaum located a telecopy in his files from Mr. Altman to Mr. Nussbaum on March 24, 1993, of a March 9, 1992, *The New York Times* article, "Clinton Defends Real-Estate Deal." This apparently was the material to which Ms. Hanson was referring, but Mr. Altman does not remember sending it and Mr. Nussbaum does not remember receiving it.

Mr. Nussbaum called Mr. Clifford Sloan, an attorney in the Office of White House Counsel who had attended the Waco meeting, back into his office and asked Ms. Hanson to repeat for him what she had just told Mr. Nussbaum. Mr. Sloan had the impression from Ms. Hanson that the referral already had occurred. Mr. Nussbaum understood it had already been made or was about to be made. Mr. Nussbaum asked Ms. Hanson to call Mr. Sloan if there were further press developments. These conversations with Ms. Hanson were completed in less than 5 minutes. Either Mr. Nussbaum or Mr. Sloan reported the conversation to Senior Advisor, Mr. Bruce Lindsey, who asked only to be kept informed. At that time, Mr. Lindsey handled press inquiries regarding Arkansas-related matters, such as Whitewater, for the White House.

Ms. Hanson called Mr. Sloan at least twice with more information about the increasingly detailed press inquiries about the referral. Mr. Sloan involved Mr. Neil Eggleston, a new lawyer in the Counsel's Office, in the matter and Mr. Eggleston may have participated with Mr. Sloan in a call from Ms. Hanson on October 7, 1993. During the October 7, 1993, conversation, Ms. Hanson described the "RTC Early Bird," a circular that reported on press inquiries made to RTC. She said that a recent issue (September 30, 1993) described press inquiries made by *The Washington Post* and the *Associated Press* relating to multiple referrals, which Ms. Hanson understood to be concerning Madison Guaranty. Ms. Hanson described some of the inquiries being made by *The Washington Post*.

On October 4 or 5, 1993, while traveling with the President, Mr. Lindsey received news from a source outside the Government who had helped the Clinton Presidential campaign respond to questions about Whitewater that Mr. Jeff Gerth of *The New York Times* and perhaps other reporters had been making inquiries related to the criminal referrals. The reporters were asking about checks written on Madison Guaranty accounts to the Clinton gubernatorial campaign. They indicated these checks were somehow at issue in nine criminal referrals made by the RTC. This information was consistent with what Mr. Lindsey had learned from Mr. Sloan and Mr. Eggleston. Later, Mr. Lindsey told the President about these press inquiries. The President did not ask Mr. Lindsey to do anything and Mr. Lindsey did not suggest there was anything that could or should be done about the criminal referrals.

On October 7, 1993, Mr. Sloan and perhaps Mr. Eggleston told Mr. Lindsey about the additional information received from Ms. Hanson. Mr. Lindsey asked whether it was appropriate for the White House to be getting the information that Ms. Hanson was providing. Messrs. Sloan and Eggleston, who had considered this question already, said they had concluded it was, especially because Ms. Hanson was providing information that was coming to her from the press.

Apparently in response to intensifying press interest, on or about October 13, 1993, Mr. Jack DeVore, the Treasury Assistant Secretary for Public Affairs, arranged a meeting with White House communications and legal staff to discuss their

press response. The meeting took place on October 14, 1993, and was attended by: Mr. DeVore; Ms. Hanson; Secretary Bentsen's Chief of Staff, Mr. Joshua Steiner; Mr. Nussbaum; Mr. Lindsey; White House Communications Director, Mr. Mark Gearan; Mr. Eggleston; and Mr. Sloan.

At the meeting, Mr. DeVore described the press inquiries they had received over the past several weeks from Ms. Susan Schmidt of *The Washington Post* and Mr. Gerth. Contemporaneous handwritten notes of that meeting taken by Mr. Lindsey and Mr. Gearan confirm that Mr. DeVore described the inquiries in detail. Mr. DeVore indicated that he had spoken with reporters, and that Ms. Schmidt had been to see Ms. Jean Lewis, an RTC investigator handling the Madison matter out of Kansas City. Mr. DeVore said that Mr. Gerth had asked him to obtain the referral and determine who endorsed four checks identified in the referral that were Clinton gubernatorial campaign contributions drawn on Madison Guaranty S&L accounts. Mr. Lindsey subsequently called the custodians of the campaign contribution records in Little Rock and requested copies of the four checks asked about by Mr. Gerth.

Mr. DeVore reported that Mr. Gerth also wanted to know why the criminal referrals had been sent from the Kansas City RTC office to the RTC in Washington, D.C., rather than directly to the U.S. Attorney's office in Little Rock. He also wanted to know whether the referrals by this time had, in fact, been sent to Little Rock. Mr. DeVore said he wanted to confirm to Mr. Gerth that the referrals had been sent to the U.S. Attorney before Mr. Gerth made his inquiry in order to avoid any inference that the referrals would have been held up in Washington but for his call.

No White House official took any action based on the information discussed during this meeting other than preparing to respond to press inquiries. All of the staff members involved to this point had the clear impression that the referrals already had been accomplished.

On October 31, 1993, *The Washington Post* published a detailed story by Ms. Schmidt about the Madison Guaranty criminal referrals. On November 2, 1993, *The New York Times* published a detailed story by Mr. Gerth about the referrals. These reports included the same subjects reported by Treasury to White House officials during the preceding period.

#### **Contacts Involving Eugene Ludwig**

On December 30, 1993, Mr. Eugene Ludwig, Comptroller of the Currency and head of the OCC (the agency with principal regulatory authority over national banks), had a brief exchange with the President during the Renaissance Weekend in Hilton Head. Their recollections differ somewhat, but they agree the President said he wanted to have a further talk with Mr. Ludwig about the Madison Guaranty/Whitewater matter. Mr. Ludwig called Ms. Jean Hanson, the Treasury General Counsel, for guidance. She referred him to the White House Counsel's Office. He reached Mr. Sloan at home and told him that he was attending Renaissance Weekend and that the President had mentioned the Madison matter to him. Mr. Ludwig requested material from Mr. Sloan that would educate him about Madison so he could converse with the President on the subject more knowledgeably. Mr. Sloan told Mr. Ludwig that he or someone else from the White House Counsel's Office would call him back. Mr. Ludwig also telephoned Mr. William Kennedy of the Counsel's Office about his conversation with the President. Mr. Kennedy suggested that Mr. Ludwig discuss the matter with Mr. Joel Klein, Deputy White House Counsel, who also was attending Renaissance Weekend.

Mr. Sloan conferred with Mr. Eggleston and they agreed it would be unwise for Mr. Ludwig to have further conversations with the President about the Madison matter. Mr. Eggleston reached Mr. Klein who agreed. Mr. Klein spoke to the President who said that he had intended to ask Mr. Ludwig if he could recommend financial or real estate experts who could review publicly available information about Whitewater and write about it for the press in a way that would take the mystery out of it. The President agreed with Mr. Klein that any conversation with Mr. Ludwig could be misconstrued and that he should have no further conversations about Whitewater with Mr. Ludwig. Mr. Klein later told Mr. Ludwig that he should not pursue further discussions with the President on the subject.

At some later point, Mr. Ludwig telephoned Mr. Nussbaum and mentioned that he had spoken to the President about Whitewater at Renaissance Weekend. Mr. Nussbaum told Mr. Ludwig that he agreed with Mr. Klein that it would be unwise for Mr. Ludwig to have further discussions with the President about the matter. Mr. Nussbaum later mentioned this conversation to the President, who told Mr. Nussbaum he continued to agree that further conversations with Mr. Ludwig should not occur.

Later in January, Mr. Ludwig called Ms. Margaret Williams, Mrs. Clinton's Chief of Staff, to offer his unsolicited advice about how the White House should be handling the Whitewater matter. Ms. Williams listened to Mr. Ludwig, thanked him for sharing his thoughts, and did nothing with his suggestions.

### **Independent Counsel Deliberations**

During the early part of January 1994, the White House was considering whether, when, and how to ask the Department of Justice for the appointment of an Independent Counsel to carry on the investigation of the criminal referrals that had been made in connection with Madison Guaranty/Whitewater. The President requested the appointment of an Independent Counsel on January 12, 1994.

Mr. Altman and Ms. Williams worked together on Health Care issues. On January 4 or 11, 1994, Mr. Altman made a diary entry concerning Ms. Williams' comment to him that press questions about Whitewater were affecting time Mrs. Clinton had available for Health Care. He also recorded an impression that the White House was trying to negotiate limits on the scope of a putative Independent Counsel's jurisdiction if one were to be appointed by the Attorney General. Mr. Altman confirmed to us that neither Ms. Williams nor anyone else at the White House ever told him or implied that the White House was trying to negotiate such limits. We found no evidence of any such efforts.

### **Contacts Relating to Statute of Limitations and Mr. Altman's Recusal Deliberations**

In January 1994, Republican members of Congress drew attention to the approaching February 28, 1994, expiration of the statute of limitations on any potential civil claims that could be brought by the RTC arising out of the failure of Madison Guaranty. In response to congressional interest, the RTC provided at least one briefing to congressional staff on the procedural options available to the RTC in the absence of legislation extending the limitations period. During this same period, and in anticipation of the RTC's need to make a decision about how to proceed with the Madison Guaranty claims, Mr. Altman began considering whether he should formally recuse himself from participating in any action relating to Madison Guaranty.

Questions about recusal also arose with the nomination of Ms. Ricki Tigert as Chairman of the FDIC. At her confirmation hearing on February 1, 1994, Ms. Tigert was asked if she would make a blanket recusal as to any matters related to the President. She declined to commit to a blanket recusal, saying she would evaluate the need to recuse on a case-by-case basis.

Mr. Altman sought a meeting with White House officials on February 2, 1994, for the purpose of providing the same information related to the statute of limitations issue that the RTC had been providing to the Congress and the press. Mr. Altman said he intended to bring Ms. Hanson to the meeting. The White House participants were Deputy Chief of Staff, Mr. Harold Ickes; Mr. Nussbaum; Ms. Williams; and Mr. Eggleston, none of whom recalls being aware of the purpose for the meeting before they arrived. Although the meeting was held in Mr. McLarty's office, he did not participate in the meeting.

Mr. Altman spoke from talking points prepared for him by Ms. Hanson. He outlined the procedural options available to the RTC if the statute of limitations for the Madison civil matter was not extended, noting that eight Republican Senators and Congressmen had asked the RTC to seek tolling agreements from the President and Mrs. Clinton. The participants did not discuss the substance or merits of the Madison matter and the White House officials offered no opinions or guidance on how the RTC should handle any potential civil case, including the statute of limitations issue. Ms. Williams inquired whether Mr. Altman intended to provide the same information to the Clintons' private lawyers. (Any decision to be taken on a tolling agreement properly would be made by the individuals involved in consultation with their private lawyers.) Mr. Altman said he assumed so. No White House official made any other inquiries or requests of Mr. Altman related to the statute of limitations issue. No White House official took any action to influence the way in which the RTC considered the procedural options presented by Mr. Altman.

After completing his briefing on the statute of limitations, Mr. Altman raised the subject of his recusal. None of the White House participants in the meeting was aware in advance of the meeting that Mr. Altman would be discussing recusal. Recollections differ as to whether Mr. Altman had decided to recuse himself from Madison-related matters before the February 2, 1994, meeting. Mr. Altman told us that he had not done so, and that he had not planned to raise the subject of recusal with the White House at the statute of limitations meeting on February 2, 1994. Ms. Hanson, however, apparently understood that Mr. Altman had made a decision

to recuse the preceding day and that he was planning to announce his decision to the White House at the February 2, 1994, meeting.

The participants vary in their accounts of whether Mr. Altman actually announced a decision to recuse or said only that he was considering recusal. Ms. Hanson believes that Mr. Altman read the talking point that she had prepared for him, which states, "I have decided that I will recuse myself from the decisionmaking process, as interim CEO of the RTC. . . ." Mr. Altman told us that he said, "I have been advised to recuse myself and I intend to take that advice." None of the White House participants in the meeting understood Mr. Altman to have announced a decision already made. All White House participants understood Mr. Altman to say he was considering recusal.

Mr. Altman told the group that he had been advised that he had no legal or ethical obligation to recuse. He said, however, that Ms. Hanson and Treasury Secretary, Lloyd Bentsen, had recommended that he recuse. In any event, he said, it would make no difference because he intended to accept the recommendation of the RTC's Acting Deputy CEO, Mr. Jack Ryan, and RTC General Counsel, Ms. Ellen Kulka, regarding any Madison-related decision that had to be made before the statute of limitations expired. Mr. Altman said that Mr. Ryan and Ms. Kulka had come to the RTC from the Office of Thrift Supervision and that he had confidence in them.

Most participants agree that Mr. Nussbaum was the principal respondent. By his own account, corroborated by others present, Mr. Nussbaum expressed a view that Mr. Altman should certainly recuse if he had a legal or ethical obligation to do so, but he should consider whether he ought to recuse if he did not. Mr. Nussbaum's remarks were motivated by his belief that political appointees have an obligation to serve and should avoid that obligation only if there is a legal or ethical requirement to do so. Mr. Nussbaum also was concerned about developing a precedent in the Clinton Administration for recusals based on nothing more than the fact that the recusing individual was a political appointee of the President. In particular, Mr. Nussbaum was concerned that a decision by Mr. Altman to recuse would undercut the stand taken by Ms. Tigert during her confirmation hearings the previous day.

Mr. Nussbaum also observed to Mr. Altman that even were Mr. Altman to rely on a recommendation from Mr. Ryan and Ms. Kulka, his presence would have a positive effect on the care and professionalism with which they developed their recommendation. Mr. Nussbaum had a prior unfavorable experience on an OTS matter in which Ms. Kulka had been involved.

Mr. Ickes said he did not think Mr. Altman needed to recuse himself because of his relationship with the President, but that recusal was entirely up to Mr. Altman. Ms. Williams asked Mr. Altman why it was necessary to recuse if he planned to accept the staff recommendation anyway.

All of the participants understood, either explicitly or implicitly, that the White House considered that the ultimate decision on recusal was Mr. Altman's, alone, to make. Mr. Altman said he intended to consider the subject further.

Mr. Steiner, who did not attend the February 2, 1994, meeting, developed an impression of what had happened by talking to Mr. Altman. On February 12, 1994, and again on February 27, 1994, Mr. Steiner described the February 2, 1994, recusal discussion in his diary, commenting that Mr. Altman was under "intense pressure" by the White House not to recuse and that the White House officials present at the meeting—Mr. Nussbaum, Mr. Ickes, and Ms. Williams—had told Mr. Altman that recusal was "unacceptable." Notwithstanding these characterizations in his diary, Mr. Steiner told us that he did not understand that the White House applied "intense pressure" to discourage Mr. Altman from recusing and that both that phrase and the term "unacceptable" were his, not Mr. Altman's. Mr. Steiner also told us that he knew only that Mr. Ickes and Ms. Williams were present at the meeting and could not fairly attribute any views to them.

The following day, February 3, 1994, Mr. Altman determined that he would not recuse himself from the Madison matter. He reported his decision to each of those who had attended the meeting the day before. After Mr. Altman had informed Mr. Ickes, Ms. Hanson recalls encountering Mr. Ickes, who asked her who was aware of her earlier recommendation to Mr. Altman that he recuse. She also recalls giving several names. Mr. Eggleston recalls hearing this colloquy, but Mr. Ickes does not remember it. Sometime later, Mr. Altman had a brief conversation with Mr. McLarty on the subject. Mr. McLarty recalls that Mr. Altman described himself as still weighing the issue.

At about this same time, Ms. Hanson called Mr. Nussbaum about a letter written to Mr. Altman by Congressman Leach on February 3, 1994, asking that Mr. Altman consult ethics officers about recusal. Ms. Hanson said that Treasury was researching the ethics issue. Mr. Nussbaum suggested that Mr. Foreman, Treasury's ethics



officer, talk to Ms. Beth Nolan, the White House ethics expert and a lawyer whose judgment he trusted.

After his conversation with Ms. Hanson, Mr. Nussbaum alerted Ms. Nolan that Mr. Foreman would be calling her. Mr. Nussbaum told Ms. Nolan that he had concerns about leaving decisionmaking to Ms. Kulka if it turned out that Mr. Altman had an ethical obligation to recuse.

Mr. Foreman called Ms. Nolan on or about February 4, 1994. They discussed the ethics standards that might apply to a Presidential appointee whose recusal was requested by Congress or was otherwise being considered. Mr. Foreman identified three issues he expected to consider: Vacancy Act requirements, legal and ethical standards applicable to any Executive Branch appointee, and an appearance of impropriety standard.

Ms. Nolan and Mr. Foreman did not discuss how a recusal by Mr. Altman would affect the Madison case. They specifically agreed that they would not discuss the merits of the Madison case, and observed that neither of them knew anything about the merits. Ms. Nolan agreed that Mr. Foreman was considering the right issues. The call ended with the understanding that Mr. Foreman would call the Office of Government Ethics and the ethics official at the RTC to get assistance in determining whether Mr. Altman had an obligation to recuse. Ms. Nolan declined to participate in Mr. Foreman's follow-up conversations with the Office of Government Ethics and the RTC.

Mr. Foreman called Ms. Nolan again the following week, on or about February 9, 1994. Mr. Foreman raised the question whether Ms. Tigert's decision to recuse from any matter affecting the President and Mrs. Clinton, which she had announced the day before, affected any decision with respect to Mr. Altman. Ms. Nolan had no recommendation on the matter. During this conversation, Mr. Foreman told Ms. Nolan that both OGE and the RTC were inclined to conclude that there was no ethical requirement that Mr. Altman recuse and the decision could be left to him.

At some later point, the date of which he does not recall, Mr. Ickes believes that, in the course of discussing a number of subjects, he briefly informed the President of the February 2, 1994, meeting and Mr. Altman's subsequent decision not to recuse. He recalls a similar conversation with Mrs. Clinton, on a date he does not recall, and also in the course of discussing a number of subjects. Neither of these conversations lasted much longer than a minute. The President and Mrs. Clinton do not recollect these conversations.

#### **Contacts Relating to the February 24, 1994, RTC Oversight Board Hearing**

On February 16, 1994, Mr. Steiner stopped by the office of Senior Advisor, Mr. George Stephanopoulos, to discuss Mr. Steiner's concern that the subject of Mr. Altman's recusal would be raised at the Senate Banking Committee's RTC Oversight Board hearings scheduled for February 24, 1994. Mr. Steiner told Mr. Stephanopoulos that he believed Mr. Altman should recuse prior to the hearing. Mr. Stephanopoulos said that would be fine. Mr. Steiner said that others in the White House may not agree. Mr. Stephanopoulos offered to "shop" the issue in the White House to determine if there was any opposition. Mr. Steiner discouraged him, saying he wanted to check with Mr. Altman first. By this time, the statute of limitations already had been extended and no Madison-related issue would be presented for a decision before Mr. Altman's appointment was scheduled to expire on March 30, 1994. According to Mr. Steiner, Mr. Altman told him that he already had decided not to recuse himself and that he did not want to revisit the issue. As a result, Mr. Steiner did not pursue the issue with Mr. Stephanopoulos. Mr. Stephanopoulos has no specific recollection of this contact.

In the days preceding the hearing, Mr. John Podesta, White House Staff Secretary, was assigned the task of monitoring hearings potentially involving Whitewater-related matters, including the upcoming RTC oversight board hearings. In this context, he consulted with Mr. Mike Levy, Treasury's Assistant Secretary for Legislative Affairs. Mr. Podesta discussed with Mr. Levy Mr. Altman's need to be prepared to answer questions about his non-recusal—particularly because Ms. Tigert recently had agreed to a blanket recusal. Mr. Podesta also had telephone conversations with Mr. Steiner about the upcoming hearing. At some point, Mr. Steiner told Mr. Podesta that Mr. Altman was considering announcing in his opening statement at the hearing that he expected to step down as head of the RTC on March 30, 1994, regardless of whether there was a pending nomination. Mr. Podesta relayed this information to others in the White House.

On February 23, 1994, Mr. Altman had a chance encounter with Mr. Nussbaum and they briefly noted that the nomination of Mr. Larry Simons to be head of the RTC would go to the Hill shortly. Also on February 23, 1994, Mr. Altman called Mr. Ickes. Their recollections of this conversation are different. Mr. Altman's memory is

that he told Mr. Ickes he expected to announce during his testimony the following day that he would step down as the interim head of the RTC on March 30, 1994, regardless of whether a permanent CEO had been nominated by the White House. Mr. Ickes recalls that Mr. Altman said he would be testifying the following day and that he was thinking about announcing his recusal. Mr. Ickes may have assumed that Mr. Altman was referring to recusal when he said he was thinking about "stepping down." Mr. Ickes asked whether there had been any change of circumstances between the February 2, 1994, meeting and the impending hearings, and observed that if there had not, he did not understand why there would be a need for Mr. Altman to change his decision on recusal. However, he repeated that the decision was up to Mr. Altman.

Mr. Altman said he was leaving to go to an evening event and wanted Mr. Ickes to think about the issue. Mr. Altman said he would call again when he returned at about 8:30 p.m. After about 10 minutes, Mr. Ickes decided he did not want to wait for Mr. Altman's call. He called Mr. Steiner, told him about the phone call with Mr. Altman, and said he had nothing more to add to what he had said already. Mr. Ickes repeated to Mr. Steiner that any decision on recusal was up to Mr. Altman.

Before the February 24, 1994, hearing, Mr. Podesta learned that the February 2, 1994, meeting had occurred and believes he spoke to Mr. Steiner to ensure that Mr. Altman was prepared adequately to answer questions about it. Mr. Eggleston, who also was involved in preparation for the hearings, consulted Ms. Hanson on the same question. She read him a Q&A and Mr. Eggleston believed the response adequately described the meeting, as it included both the statute of limitations issue and recusal.

#### **RTC Oversight Board Hearing Follow-up**

Mr. Altman testified on February 24, 1994. Following the hearing, Mr. Eggleston, who had been present at the hearing, expressed concern to Mr. Nussbaum, Mr. Podesta, and others about the way in which Mr. Altman had responded to a question from Senator Gramm asking him to describe the substance of the communication that occurred on February 2, 1994. Mr. Altman had not mentioned recusal as one of the subjects discussed at the February 2, 1994, meeting. Mr. Sloan expressed concern that Mr. Altman also had not mentioned the September 29, 1993, and October 14, 1993, meetings in response to a question from Senator Bond about whether the RTC had ever advised the White House of the criminal referral. And Mr. Nussbaum became concerned when he was told that Mr. Altman had testified that he had arranged the February 2, 1994, meeting with Mr. Nussbaum. After a series of conversations among various White House officials concerning Mr. Altman's testimony, they concluded on March 1, 1994, that Mr. Podesta should call Mr. Altman to tell him the White House had concerns about the completeness of his testimony.

The same day, Mr. Podesta called Mr. Altman and expressed the concerns identified by the White House group. Mr. Altman told Mr. Podesta that he was considering an appropriate way to supplement his testimony regarding the February 2, 1994, meeting, although he believed that the recusal discussion could be considered as falling within his description of the procedure for reaching a decision on the statute of limitations. Mr. Altman told Mr. Podesta that he was unaware of the fall 1993 meetings and believed his response to Senator Bond's question had been accurate. He agreed with Mr. Podesta's recommendation, however, that he discuss with Ms. Hanson whether she had additional information that would require him to supplement his testimony in response to Senator Bond's question. Mr. Altman told Mr. Podesta that he did not think his remark about Mr. Nussbaum's role in arranging the February 2, 1994, meeting required clarification.

At about this time, Mr. Lindsey learned that the Treasury press office had called the White House press office about how Treasury should respond to an inquiry from ABC News directed to Mr. Altman. The press was asking whether the White House had pressured Mr. Altman to have the RTC provide a briefing to Mr. David Kendall, the Clintons' personal lawyer, on the statute of limitations issue. Mr. Lindsey called Mr. Altman, who told him about the February 2, 1994, meeting. Mr. Altman told Mr. Lindsey that Ms. Williams had asked if the private attorneys would be briefed on this process and that he had told her he assumed so. Mr. Altman told Mr. Lindsey that this was put as a question, and that he had received no instructions from anyone at the meeting to do anything. Mr. Lindsey suggested that Mr. Altman call the reporter back and tell him that. Mr. Altman agreed.

#### **Mr. Altman's Recusal and Discussions About Mr. Jay Stephens**

The accounts of how Mr. Altman reached his recusal decision vary. It is undisputed, however, that he recused himself on February 25, 1994, the day after the hearing. Mr. Steiner telephoned Mr. Podesta and told him that Mr. Altman had

recused himself during a conversation with an editor of *The New York Times*. Mr. Podesta conveyed that news to Mr. Stephanopoulos in a brief conversation that Mr. Stephanopoulos does not recall, although Mr. Stephanopoulos does recall receiving the same information directly from Mr. Steiner.

Mr. Stephanopoulos complained to Mr. Steiner about the manner in which the recusal decision had been announced. He does not recall telling Mr. Steiner that the President was angry at the manner of the announcement and he did not suggest that Mr. Altman reconsider his decision. In the course of this conversation, Mr. Stephanopoulos also said he had heard the RTC had retained Mr. Jay Stephens to represent the RTC with respect to Madison civil claims. He conveyed anger and frustration that Mr. Stephens could have been retained in view of his public political attacks on the President. Mr. Stephanopoulos wondered how anyone could have determined that Mr. Stephens was impartial and without conflicts under these circumstances. Mr. Steiner explained that Mr. Stephens and his law firm had been selected by an independent board of experts. He said that the retention of Mr. Stephens was a done deal and advised that it would be unwise to pursue the matter further. Mr. Stephanopoulos agreed. He did not ask Mr. Steiner to take any action regarding the Stephens appointment.

Also on February 25, 1994, Mr. Ickes and Mr. Stephanopoulos called Mr. Altman and expressed irritation about the manner in which Mr. Altman had accomplished his recusal, but they did not seek to reverse it. Mr. Stephanopoulos suggested that Mr. Altman write a letter to the President explaining his actions and Mr. Altman said he would. Mr. Stephanopoulos and Mr. Ickes also may have asked Mr. Altman about the hiring of Mr. Stephens. Mr. Altman said he did not know Mr. Stephens or that the RTC had retained him. Neither Mr. Stephanopoulos nor Mr. Ickes asked Mr. Altman to do anything about the Stephens appointment.

About the same time, Mr. Ickes also discussed the retention of Mr. Stephens with the President. The President expressed concern about Mr. Stephens' ability to be fair and impartial. The President did not direct Mr. Ickes to take any action with respect to Mr. Stephens and Mr. Ickes took no action.

*Lloyd N. Cutler**The Washington Post*

August 3, 1994

# A 'Heads-Up' History

*From Truman and Eisenhower to Watergate and Whitewater.*

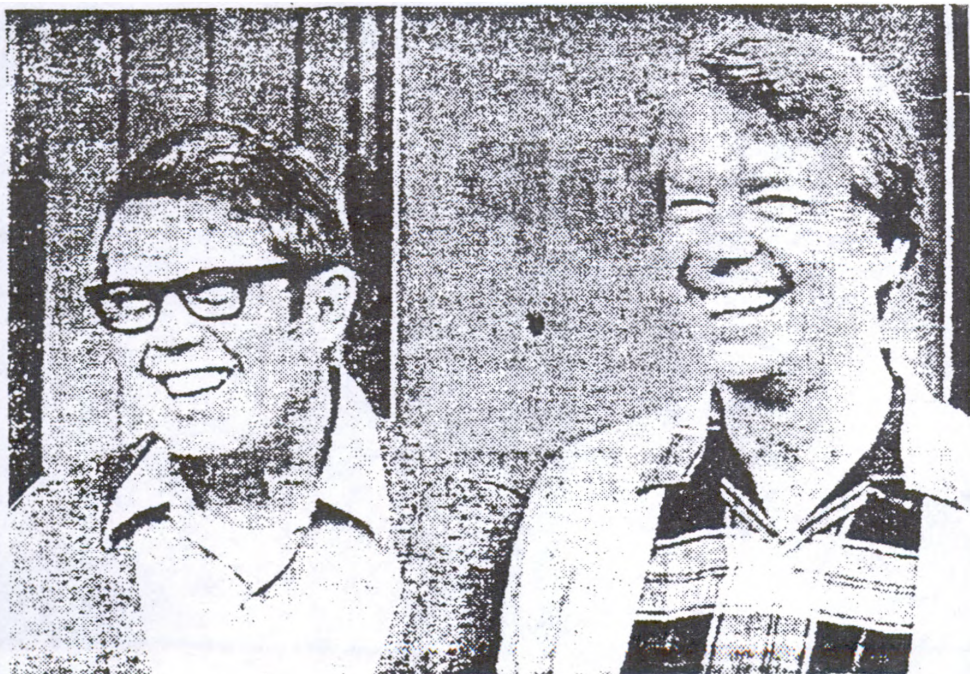
In last week's House Banking Committee hearings on Whitewater, I testified that it was both customary and ethical for government agencies with law enforcement responsibilities to inform the White House whenever a criminal investigation is launched that involves high administration officials or the president himself. Others have challenged that conclusion.

As to the proposition that such a "heads-up" is customary, I cannot think of a case in which such an investigation was started without informing the president. President Truman was informed when various of his aides came under inquiry; so were Presidents Eisenhower, Kennedy and Johnson. And as the Halde-man diaries show, President Nixon was informed on a day-to-day basis as to the status of the FBI investigation of the Watergate break-in and how close it was getting to the White House itself.

What was wrong in the Watergate case was not the initial heads-up but the way Nixon

improperly sought to follow the progress and influence the outcome of the inquiry. As a vow of "never again," the independent counsel law was enacted in 1977. Before it passed, Attorney General Griffin Bell began an investigation of whether the Carter family's peanut warehouse funds had been illegally diverted to his election campaign. Because of President Nixon's bad example, Judge Bell appointed his own independent counsel to pursue the inquiry. However, he informed the president of the investigation before the independent counsel was appointed. And when Judge Bell learned that President Carter was planning to make a trip abroad with a congressman the department was about to indict, Judge Bell set up a "sensitive case" file so that the president could receive a heads-up whenever a high official was involved.

Attorney General Benjamin Civiletti continued this practice after the independent counsel law was adopted. When he petitioned for the appointment of an independent counsel to look





into what turned out to be baseless allegations of cocaine-sniffing against President Carter's chief of staff, Hamilton Jordan, Civiletti informed the White House counsel shortly before the petition was filed. And when the Department of Justice began investigating whether Billy Carter had violated the Foreign Agents Registration Act, the attorney general informed the White House counsel of this fact.

When Attorney General Edwin Meese was conducting his initial inquiry into the Iran-contra affair and learned that Lt. Col. Oliver North claimed to be acting with the authority of the president, Meese informed President Reagan and White House Chief of Staff Donald Regan well before Meese petitioned for the appointment of a statutory independent counsel. And according to White House Counsel Boyden Gray, he usually received a heads-up when a high official of President Bush's administration came under criminal investigation. This longstanding practice has continued under President Clinton.

Of course, such a heads-up should be carefully treated and closely held. Obviously, the receipt of a heads-up does not entitle a president to seek to influence the outcome of an investigation or to ask for further details to be passed on to relatives or high officials who are the subjects of the inquiry. The independent counsel law was enacted to prevent this from happening, and it was reenacted before its five-year "sunset" date in 1982 and 1987. (Republican opposition blocked the 1992 renewal, and we were without an independent counsel law until President Clinton finally obtained its reenactment last June, again over strong Republican opposition.) As Richard Nixon learned, presidents pay a heavy political price for trying to influence the outcome of a criminal investigation involving themselves or other high administration officials, and they are most unlikely to repeat this mistake.

But the giving and receiving of a heads-up, without any subsequent effort to influence the outcome, is an entirely different proposition. Usually when a high official is involved, and certainly when the president or a member of his family is involved, leaks are inevitable at a very early stage of the investigation. As its own officials have testified, the RTC has been particularly notorious for leaking news about its numerous criminal referrals. The president and his staff need to know enough not to be taken by surprise and to prepare comments and responses the moment a potentially scandalous news leak occurs.

The president is the heart and brain of the executive branch. Like a hospital patient undergoing tests, he is monitored by a host of journalists who watch his every move and bombard him with questions. An unanswered question can be a story in itself, especially when it contains a hint of possible scandal. Presidents simply cannot afford to be uninformed or taken off guard.

There is a natural concern that a heads-up to the president can make it possible for him to tilt the machine. But apart from the safeguards of the independent counsel law and the force of public opinion, there are really no other legally and politically practical solutions under our constitutional plan. It grants the president alone *all* of the executive power, including the power to investigate and enforce violations of the criminal laws. He appoints all the senior officers with law enforcement responsibility, including the attorney general and the chief executive of the RTC, and they serve at his pleasure. Whatever they may do, they do in the exercise of his executive power, not the legislative power of Congress or the judicial power of the courts.

Of course he must not be allowed to interfere in the use of that power against his close colleagues or himself. But he is at least entitled to know enough to respond to scandalous press leaks when they occur. To respond effectively is one of his official duties. For other government officers to inform him of what he needs to know to respond effectively is part of their official duties. As Judge Bell has said, it is not their job to sandbag the president.

A heads-up in these circumstances is both ethical and proper. This was the conclusion reached in the report of the bipartisan subcommittee of the Senate Judiciary Committee that investigated the Billy Carter-Libya case. In the subcommittee's view, "it would not have been improper for the Attorney General to advise the President of significant information received by the Department of Justice about Billy Carter's activities promptly upon the receipt and analysis of that information. . . . [T]he President should receive significant information relevant to the exercise of his constitutional responsibilities with respect to . . . law enforcement even if that information pertains to a member of his family."

In the case of the Treasury-to-White House heads-up about the Madison Guaranty criminal referrals, all the evidence shows the White House did not use it in any way to interfere with the RTC referrals or the ensuing Department of Justice investigation. The RTC's ca-

reer officers have testified that no one exerted any pressure on them. The criminal referrals were made; an independent counsel was appointed to investigate them; the statute of limitations applicable to RTC civil claims was extended; the president's political critic Jay Stephens was retained to handle possible civil claims, and he is still on the job. And based on the evidence furnished to it by the Treasury Inspector General, the nonpartisan Office of

Government Ethics, still headed by an appointee of President Bush, has now formally ruled that when the Treasury gave a heads-up to the White House about Madison Guaranty, no ethical standard was violated.

---

*The writer is special counsel to President Clinton and also served as counsel to President Carter.*

FRIDAY, AUGUST 5, 1994

WSJ

# Candor Was the Casualty

By JAMES A. LEACH

As we return to this theater of the surreal, if not the absurd, with its "shut-up" standard of comity, and its "shut-down" dismissal of free inquiry into the causes of taxpayer losses associated with a failed savings and loan in Arkansas: where are we in this probe?

The limited subject matter of these hearings—White House contacts with the Treasury and Resolution Trust Corp.—is sandwiched between two circumstances: a) conflicts of interest in Arkansas that led to a \$67 million loss to the taxpayer; and b) efforts by one part of the RTC to delay and object to criminal referrals developed by another part.

Here let me lay on the record the following new facts. While White House witnesses denied any improprieties in their contacts with the Treasury and RTC, and left the impression that no overt or subtle hints for action were related to appointees in the regulatory agencies, it is impressive that one day after the Sept. 29 meeting at the White House an unprecedented legal review of the referrals was commenced. On Sept. 30, the Professional Liability Section of the RTC attempted to negotiate a three-week delay before submission of the referrals to the Justice Department. One week was agreed to by the Kansas City criminal investigations unit. Subsequently a legal analysis was developed objecting to the criminal unit's conclusions primarily on statute of limitations and double jeopardy grounds.

## Unprecedented Procedure

According to testimony [that] Acting RTC General Counsel Glion Curtis gave the Treasury inspector general, [Treasury General Counsel] Jean Hanson appears to have been consulted on the development of the critical legal analysis on Oct. 4. On the 5th the analysis was provided [to] the criminal investigations

## *From the Whitewater Folder*

Today we present some documents from this week's Whitewater hearings. On top, we print a statement delivered Wednesday by Rep. James Leach (R., Iowa), the ranking minority member on the House Banking Committee, which includes a report of an RTC legal review starting one day after a White House meeting, and discussion of Washington contacts with RTC Kansas City investigators.

Mr. Leach also demands a review of all documents that have been redacted, the process by which the White House staff blacks out sections of documents it judges are not relevant to the hearings. Below we reprint materials on a redacted document supplied in full under pressure from the Senate Banking Committee.

unit, which held firm, refusing to capitulate to PLS objections. The referrals were then sent to the U.S. attorney in Little Rock. So apparently, in an unprecedented procedure, were the PLS objections.

It may be true that criminal referrals were not effectively blocked, but it is not true that an effort to do so was not made. There is, for instance, a Sept. 30 e-mail from RTC-PLS attorney Julie F. Yanda to

Richard Iorio, head of the Kansas City criminal investigations unit, which establishes that Glion Curtis, who apparently at this time reported "de facto" to Ms. Jean Hanson, was in telephone contact with Kansas City about the referrals on that date.

In retrospect, the testimony of White House witnesses last week remind[s] me of the comments journalist I.F. Stone made of Pentagon body counts during the Vietnam War. Pentagon spokesmen weren't telling complete falsehoods,

Stone argued, but they failed to reveal the full story. It would be, he suggested, like bumping into a man running out of a bank with a satchel full of money, waving a gun, and asking: What are you doing? If the man answered that he was waiting for a car, he would be telling the truth but not presenting a fair representation of the circumstances.

The "see no wrong, hear no wrong, do no wrong" assertions of the White House staff are premised on the notion that it is not wrong to provide insider notification to a public official of the details of a criminal investigation being commenced against him, despite the fact that the official could realistically expect that elements of the federal bureaucracy, especially his political appointees and private-sector friends, especially those also potentially touched by the investigation, might have reason to help him, either in stalling an investigation or frustrating a probe through evidence destruction.

Today candor and cronyism are on trial. On the one hand we have a witness [Treasury Deputy Secretary Roger Altman] who testified to one known agency contact with the White House, which now turns out to be 40. On the other, we have an independent institution, the RTC, run for a year by [Mr. Altman], who was a college

---

*It may be true that criminal referrals were not effectively blocked, but it is not true that an effort to do so was not made.*

---

buddy of the president but who was confirmed by the Senate not for an RTC job but for a Treasury post. Clearly, as evidenced in the president's reported anger at Mr. Altman's recusal almost a year after he ran the agency, the president wanted his man to be in charge of his investigation.

As for the Altman-directed briefings of the White House on the referrals, it should be clarified that they were not reviews of press inquiries. It appears that the press had gotten wind of the existence of the 1992 referral and an inkling of the possibility that a campaign referral was in the works, but the White House, as established by [White House attorney] Cliff Sloan's Sept. 30 notes, was apparently briefed on key points in all the referrals, including the possibility that [Arkansas] Gov. [Jim Guy] Tucker and [former] Sen. [J. William] Fulbright might be subjects, which wasn't known to the press for another six to nine months.

With regard to information passed on to the White House counsel's office, it should be pointed out that no precautions were taken to limit access to the information to nonsubjects of a criminal probe, and with respect to the information immediately shared with [presidential adviser Bruce] Lindsey (not a member of the counsel's office) no precautionary warnings were given to ensure that he did not mention such to the president and first lady, who at this early point in the investigation were witnesses and possible beneficiaries of alleged criminal acts.

The importance of the potential exposure of the Clintons [is] highlighted in the following two sentences from the previously redacted [White House Associate Counsel W. Neil] Eggleston memo: "The RTC could also sue outsiders, including the President and Mrs. Clinton, if the RTC found that the outsiders worked with insiders illegally to divert assets of the savings and loan. For example, if the RTC believed that the Clinton campaign knowingly diverted Madison assets at the April 19 fundraiser or that the Clintons knowingly received other diverted Madison Guaranty assets through Whitewater, it could bring suit." Given that prospect, how could the White House counsel's office not be mobilized?

Moreover, the repeated assertion that this information was being accepted in order to conduct official, press and other



business is neither sensible nor consistent with the facts. It is not sensible because the White House could have avoided press inquiries easily by referring them to the RTC and the Justice Department. It is inconsistent with the facts because it is clear this information was not used for the very purpose it was supposedly needed [for]—that is, to keep the president from meeting with people or doing things which might reflect poorly on either him or his office. In that regard, [White House Counsel Bernard] Nussbaum, Messrs. Sloan, Eggleston and Lindsey were all aware prior to Oct. 6, 1994 that Gov. Tucker might be a subject of one of nine criminal referrals. Surely one of them should have advised the president about not attending that meeting. Moreover, Mr. Lindsey, besides briefing the president, followed up certain press inquiries by requesting Clinton '84 campaign documents at a time he was aware that they might possibly be the focus of an RTC criminal investigation.

#### **Too Little Candor**

With regard to the RTC, it appears that an extensively redacted memo about

the status of the RTC's reinvestigation of Madison, the subject of which was leaked to the press, represented insider information given Treasury. Given the startling relevance of the memorandum to the first lady, the Senate demanded it be provided in full. I would renew my request that the White House allow majority and minority counsel to review all redacted material.

Finally, let me conclude by observing that the minority had hoped these hearings would be conducted very differently. A government of too little candor cannot be overseen by a legislative body with too much partisan control. The minority chafes at the scope of the hearings, at the majority's refusal to acknowledge and address the egregious conflicts of interest which precipitated the investigation of Whitewater in the first place, and at a process barren of comity and common sense.

Just as no president is entitled to insider notification of criminal proceedings, no Congress is entitled to stifle the public's right to know.

## MEMORANDUM

TO: Senator Donald W. Riegle, Jr.

FROM: Patrick Lawler

DATE: August 5, 1994

SUBJECT: Legal Basis of the RTC's Independence

---

1. The RTC is established as a corporation that is an instrumentality of the United States [Federal Home Loan Bank Act (FHLBA) section 21A(b)(1)(A)], not subject to any executive department. Instrumentality is a term generally used for non-governmental entities with federal charters such as the Chase Manhattan Bank, the Federal National Mortgage Association, or the American National Red Cross. The RTC is an agency of the United States for purposes of the Administrative Procedure Act when acting as a corporation, and the RTC is an agency of the United States to the same extent as the FDIC (a prototypically independent agency) when acting as conservator or receiver of an insured depository institution [FHLBA section 21A(b)(1)(B)]. The clear implication is that the RTC is otherwise not a U.S. agency and is therefore exempt from most laws affecting executive agencies.

The RTC is treated as a mixed-ownership government corporation for purposes of budget presentation, GAO audits, and Treasury supervision of issuance of debt or of purchase or sale of Treasury debt. "Notwithstanding the fact that no government funds may be invested in the Corporation" [FHLBA section 21A(b)(2), FIRREA section 501]. The clear implication is that the RTC is otherwise a privately owned corporation.
2. The overall strategies, policies, and goals of the RTC are subject to review and modification by the Thrift Depositor Protection Oversight Board [FHLBA section 21A(a)(6)], but any modification must be reported to the House and Senate Banking Committees within 30 days [FHLBA section 21A(a)(15)]. This statutory structure indicates that, even at the highest policy levels, interference in the RTC was expected to be rare. In fact, since 1991, when this requirement was put into effect, we have received no notice of any modification.

3. The Oversight Board, which has this limited ability to interfere, is itself an instrumentality, not an agency [FHLBA section 21A(a)(1)]. A majority of its members are independent (2 as heads of independent agencies, the Federal Reserve and the FDIC; the other 2 have fixed terms like Federal Reserve Board members or SEC Commissioners). A fifth member is the RTC's CEO [FHLBA section 21A(a)(3)].
4. The Oversight Board has no ability to modify the RTC's "internal administrative policies and procedures (including such matters as personal practices, divisions and organization of staffing, delegations of authority, and practices respecting day-to-day administration of the Corporation's affairs)" [FHLBA section 21A(a)(6)(C)].
5. The Oversight Board has no authority to review or modify RTC determinations or actions "with respect to case-specific matters" [FHLBA section 21A(a)(8)]. Clearly, criminal referrals, potential civil cases, and decisions about recusal are case-specific matters.
6. While the RTC's CEO serves "at the pleasure of the President" [FHLBA section 21A(b)(8)(C)], executive control was expected to be channeled through the very limited authority of the Treasury Secretary in his or her role as Chairperson of the Oversight Board.
7. All of the personnel of the RTC, except for the CEO, are employees of the FDIC, an independent agency.

## THE WHITE HOUSE

WASHINGTON

July 27, 1994

The Honorable Henry B. Gonzalez  
Chairman  
U.S. House of Representatives  
Committee on Banking, Finance and Urban Affairs  
One Hundred Third Congress  
2129 Rayburn House Office Building  
Washington, D.C. 20515-6050

Dear Chairman Gonzalez:

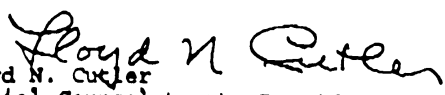
Yesterday I was asked a series of questions relating to a meeting between the President and Governor Jim Guy Tucker on October 6, 1993. I have made inquiries about that meeting and would like to report to the Committee what I learned.

The meeting took place at the request of Governor Tucker who was in Washington to meet with the Arkansas congressional delegation. It began at 3:45 p.m. and lasted about 40 minutes. I am attaching a Memorandum prepared for the President in advance of this meeting, which shows that the purpose of the meeting was for the President to accept a copy of Governor Tucker's proposal for locating a Defense finance and accounting servicing facility in Arkansas. (Governor Tucker's proposal was declined by the Department of Defense.)

Mr. Keith Mason, Deputy Assistant to the President for Intergovernmental Affairs, was present for the entire meeting. He has confirmed that the subjects of Whitewater, RTC criminal referrals or Madison Guaranty were never discussed. I have reviewed Mr. Mason's detailed notes of this meeting and find no mention of anything even remotely related to the RTC investigation. According to Mr. Mason's recollection of the meeting and his notes, in addition to the Defense facility, Governor Tucker also raised issues related to Medicaid funding, an FDA research facility, interstate highway financing, National Guard cutbacks, and NAFTA.

I trust this further elaboration will put any questions about this meeting to rest.

Sincerely yours,

  
Lloyd N. Cutler  
Special Counsel to the President

## THE WHITE HOUSE

WASHINGTON

October 5, 1993

## MEETING WITH GOVERNOR TUCKER

DATE: October 6, 1993  
 TIME: 3:45 pm  
 LOCATION: Oval Office  
 FROM: Marcia L. Hale <sup>MH</sup>  
 Dawn M. Friedkin <sup>DM</sup>

## I. PURPOSE

You will meet with Governor Tucker to accept a copy of a proposal for locating one of the planned Defense finance and accounting servicing facilities in Arkansas.

## II. BACKGROUND

Governor Tucker is in town for a meeting with the Arkansas delegation. He requested a meeting with you to deliver a copy of a proposal for locating one of the planned Defense finance and accounting servicing facilities in Arkansas at Camp Robinson. The Governor sent the original report to Secretary Aspin on October 4.

Drake Keith and Cecil Alexander are accompanying the Governor to Washington and the White House. They do not expect to join you and the Governor in the Oval Office. However, you may want to invite them in at the end of the meeting for a photo.

You should be aware that the Governor will be unable to join you on your conference call with governors on Thursday morning, because he will be enroute back to Arkansas. You may want to use this opportunity to discuss the governors roles in the NAFTA effort.

## III. PARTICIPANTS

The President  
 Governor Tucker  
 Marcia L. Hale  
 Drake Keith (to join for photo only)  
 Cecil Alexander (to join for photo only)

## IV. PRESS PLAN

White House photo only.

## V. SEQUENCE OF EVENTS

The President will greet Governor Tucker and accept the proposal in the Oval Office. At the end of the meeting The President will invite Drake Keith and Cecil Alexander in for a photo.

## VI. REMARKS

None required.

## ARNOLD &amp; PORTER

NEW YORK, NEW YORK

1200 NEW HAMPSHIRE AVENUE, N.W.  
WASHINGTON, D.C. 20036-6885

LOS ANGELES, CALIFORNIA

DENVER, COLORADO

(202) 872-6700  
CABLE "ARFORD"  
FACSIMILE (202) 872-6720  
TELEX 89-2733

TOKYO, JAPAN

JAMES F. FITZPATRICK  
DIRECT LINE: (202) 872-6878

October 7, 1994

The Honorable Donald W. Riegle, Jr.  
United States Senate  
SD-105 Dirksen Senate Office  
Building  
Washington, D.C. 20510-2201

Dear Mr. Chairman:

We represent Bernard Nussbaum, former White House Counsel, who testified before your Committee on August 4, 1994. We are writing in connection with the Committee's preparation of a report on its recent hearings on the Whitewater matter. In particular, we wish to address the facts and policy issues relating to the meeting that took place on February 2, 1994, to which Mr. Nussbaum was invited and in which he participated, along with other White House and Treasury staff. At that meeting, Mr. Altman raised the issue of recusing himself from matters relating to Madison Guaranty. We address this meeting specifically, because it was the primary focus of Senators' questions when Mr. Nussbaum appeared before the Committee.

ARNOLD & PORTER

The Honorable Donald W. Riegle, Jr.  
October 7, 1994  
Page 2

We believe that the testimony before the Committee should lead to the following conclusions in connection with the recusal discussion on February 2:

First, the policy issues that motivated Mr. Nussbaum's response when Mr. Altman raised the recusal issue -- which Mr. Nussbaum described in frank and comprehensive detail to the Committee -- were important and significant, as the Committee members acknowledged. While there can be legitimate differences of views on those policy issues, it was appropriate for Mr. Nussbaum to raise the central policy issue -- whether a public official such as Mr. Altman has a "duty to do one's duty" when there is no legal or ethical obligation to recuse oneself.

Second, the propriety of Mr. Nussbaum's discussions on February 2 cannot be evaluated through the prism of subsequent events, including the nature of Mr. Altman's later testimony and letters to the Senate which caused a "firestorm" and led, in large measure, to what became the major controversy at the recent hearings. We submit that the legitimacy of the policy issues and the appropriateness of White House Counsel to consider and engage in a discussion of these issues should be weighed separately from the question of whether, as a political judgment matter with 20/20 hindsight, some believe it would have been better had Mr. Altman recused himself.

Factual Context of the Recusal Discussion

When Mr. Nussbaum testified before the Committee, Senators' questions centered on whether, once Mr. Altman



ARNOLD & PORTER

The Honorable Donald W. Riegle, Jr.  
October 7, 1994  
Page 3

raised the issue of recusal, it was appropriate for Mr. Nussbaum to have said anything about the issue, other than to encourage Mr. Altman to recuse himself.

As the Committee is aware, the recusal discussion on February 2 took place in a meeting that Mr. Altman had sought. Mr. Nussbaum and none of the other White House participants had any idea that recusal was on Mr. Altman's agenda for discussion. Mr. Altman said he was considering recusing himself, or had decided to recuse himself, from matters relating to Madison Guaranty. However, Mr. Altman commenced the discussion with the statement that he had received ethics advice that he was not required to recuse himself. From this statement, Mr. Nussbaum concluded (as, we think would any listener who understood the appropriate ethical requirements) that Mr. Altman believed that he could act impartially in the Madison matter. Mr. Altman's statement also meant that Mr. Altman's involvement in the Madison matter did not, in the opinion of Mr. Altman and his ethics advisor, give rise to an appearance of impropriety.

This point is significant, because some questions posed to Mr. Nussbaum at the hearing did not seem to recognize that the ethics opinions necessarily took into

ARNOLD & PORTER

The Honorable Donald W. Rieggle, Jr.  
October 7, 1994  
Page 4

account the appearance issue and concluded that, under the ethics rules, there would be no appearance of impropriety in Altman's continuing on the job. Moreover, the ethics adviser was also required to consider Mr. Altman's official positions, both at the Treasury and the RTC, as well as his personal relationships. Significantly, after reconsidering all the factors -- including appearances and including Mr. Altman's positions and relationships, two subsequent ethics opinions confirmed the advice given to Mr. Altman prior to the February 2 meeting, that he was not required under the applicable ethics standards to recuse himself.

Participants at the meeting testified that Mr. Nussbaum told Mr. Altman that if he was legally or ethically required to recuse himself, then he should do so promptly. If, however, he was not legally or ethically required to recuse himself, he should consider whether he should stay on the matter. But Mr. Nussbaum made it clear that the recusal decision was Mr. Altman's to make. Indeed, Mr. Nussbaum at one point cut off further discussion by another participant at the meeting, Margaret Williams, by stating, emphatically, that the recusal decision was for Mr. Altman to make.

ARNOLD & PORTER

The Honorable Donald W. Riegle, Jr.  
October 7, 1994  
Page 5

The Policy Issue

Mr. Nussbaum testified that the recusal decision raised an important policy issue for the Clinton Administration, as well as for future administrations. On the day before the February 2 meeting, certain Republican members of the Senate Banking Committee had pressured the nominee for Chairman of the FDIC, Ricki Tigert, to agree, in advance, without knowing any of the relevant facts and without seeking ethics advice on the matter, to recuse herself from all matters relating to Madison Guaranty and Whitewater. Mr. Nussbaum and others believed that requiring Presidential nominees to regulatory agencies, as a condition of confirmation, to commit to recuse themselves from consideration of matters relating to the President was an interference with the administrative process. Mr. Nussbaum was concerned that either a promise by Ms. Tigert to recuse herself in advance (without seeking advice on whether she was legally or ethically required to do so), or a decision by Mr. Altman to recuse himself (in the face of advice that he was not legally or ethically required to do so), would be wrong and could set a dangerous precedent for the current and future administrations.

ARNOLD & PORTER

The Honorable Donald W. Riegle, Jr.  
October 7, 1994  
Page 6

On questioning by Senators, Mr. Nussbaum made clear his belief that an official "is obligated to do his duty, unless he is legally or ethically required to recuse himself."<sup>1</sup> Mr. Nussbaum testified that to permit individuals to bow out of unpleasant duties for political or personal reasons would have adverse implications for the presidency and for future Administrations:

I do not think it is in the President's interest in his capacity as President to have a group of officials who run for cover every time some political opponent criticizes him, sends him a letter or some newspaper writes an article about him....[I]f you are ethically or legally required to recuse yourself, and there are also rules with respect to that, do so. Do so promptly. But if you are not, you stay in your job and you do your duty

---

<sup>1</sup> Significantly, the Report of the Office of Government Ethics concurred:

Under the standards of conduct, employees are expected to perform their duties fully unless there is a reason that their participation in a matter will result in an actual conflict, including an inability to act impartially, or will result in an appearance of conflict significantly detrimental to the public's legitimate perception of the fairness of the Governmental processes involved.

The OGE report concluded that Mr. Altman was not required to recuse himself.

ARNOLD & PORTER

The Honorable Donald W. Riegle, Jr.  
October 7, 1994  
Page 7

and if you do not want to do your duty,  
you quit.

At the end of the hearing, a number of Senators acknowledged the serious implications of suggesting that a public official should recuse oneself from a matter if he or she is not legally or ethically required to do so. The suggestion that public perception, political fallout, or press criticism should be given greater weight than legal and ethical standards appeared to be disturbing to some Senators, as it was to Mr. Nussbaum. For example, Senator Sarbanes stated:

I think [Mr. Nussbaum] raised some very serious questions, very thought provoking on the recusal issue, and while there's been sharp reaction from many members here on the Committee, I think if they think about it, the implications of some of what's happening are very serious indeed. You're getting to the point, to take an extreme, a President comes in. He nominates people to office and they have to recuse themselves simply because he's nominated. Or you know, someone says, well, I met him and we're sort of friends and now there's a tough decision here and now I'm recusing myself.

Senator Sarbanes added:

[T]here's a cynicism, that's assuming if you have any connection at all, you can't make a tough independent judgment, and I think if we start down that path, it's fraught with very serious implications.

ARNOLD & PORTER

The Honorable Donald W. Riegl, Jr.  
October 7, 1994  
Page 8

Senator Dodd followed Senator Sarbanes' comments by stating:

[I]t's an extremely important debate and we have to find a forum in which to conduct it because I think there's a terrible danger that applying a standard that has such rigidity that we defeat the purpose for which the rule was established.

There's also the danger of a tyranny here. We're raising the bar of refusal to such a level that it has the outcome determined before any consideration is given. The notion that public perception should weigh as heavily as the ethical or legal questions is a frightening thought to me. It may be a bit old-fashioned, but I was taught to believe that in public service, the standard which you use to judge your conduct is you do what's right, even if it's unpopular, even if a good part of your constituency or the public or the press doesn't like it.

It's the standard. Is it right or wrong? There have been countless decisions made in the body in which we serve which were terribly unpopular in the hour in which they were made and played a significant and positive role in this country's history.

Mr. Nussbaum Should Not be Faulted for Raising Questions Which Were Prompted by What All Parties Agree are Significant Public Policy Issues.

Particularly in light of the statements of Committee Members noted above, we ask that the Committee acknowledge the propriety -- and certainly Mr. Nussbaum's good-faith belief in the propriety -- of

ARNOLD & PORTER

The Honorable Donald W. Riegle, Jr.  
October 7, 1994  
Page 9

discussing the recusal matter in the circumstances presented here. It simply has to be correct for public officials, particularly when they serve in the role of counsel to a governmental institution, (1) to engage in discussions with other public officials about serious and sensitive policy matters affecting such institutions, and (2) to place legal and ethical considerations above political ones. If a person in the position of White House Counsel -- or, for that matter, counsel to any government agency or department -- is forced to make potential political fallout or press criticism the controlling criterion in making decisions concerning legal and ethical matters, the integrity of decision-making will be seriously compromised. Have we come to a point where counsel cannot advise a government official to do one's duty?

Moreover, if the recusal standard is to be different from the current one, how are public officials to determine the standard? Senator Sarbanes raised this question on August 5, when Mr. Cutler appeared before the Committee. Referring to Mr. Cutler's proposition that Mr. Altman should have been encouraged to recuse himself, Senator Sarbanes stated:

Now, in this instance, of course,  
we had a situation in which both

ARNOLD &amp; PORTER

The Honorable Donald W. Riegle, Jr.  
October 7, 1994  
Page 10

legally and ethically, it was said that  
recusal was not necessary. You've said  
in your statement, well, it [i.e.,  
recusal] should have been done and you  
then said, it's much more a political  
judgment in reaching that conclusion.

That raises the fact that, in  
articulating an appropriate standard,  
it makes it extremely difficult. In  
other words, you can do a legal  
analysis and you can do an ethical  
analysis according to the rules.  
You've sort of said, well, here, having  
passed muster on both of those, there  
still should have been a recusal. And  
you say, well, that's more a political  
judgment.

When Senator Sarbanes pressed Mr. Cutler for what  
the standard should be to guide people, Mr. Cutler's  
response was that "It's a seat-of-the-pants instinct."

If the potential for political fallout should be  
the guiding criterion, then Mr. Cutler's view in  
hindsight could well be correct. However, we do not  
believe it should be.

We submit that the Committee should not fault Mr.  
Nussbaum because he did not leap to Mr. Cutler's "seat  
of the pants" political instinct, but rather adhered to  
the recognized standard that a government official must  
do one's duty, and not flee from hard decisions because  
of potential press attention. The fact that some  
observers may have believed on August 5 that on  
political grounds one should have acted differently on



ARNOLD &amp; PORTER

The Honorable Donald W. Riegle, Jr.  
October 7, 1994  
Page 11

February 2 -- based upon "instinct" or "20/20 hindsight" -- simply cannot be the basis on which Mr. Nussbaum or any other public official should be criticized.

Effect of Subsequent Events on Perceptions

During Mr. Nussbaum's testimony, Senator Mosely-Braun referred to the Japanese film "Rashomon," in which the same set of events were perceived differently by the different individuals involved. Her point was that the "Rashomon effect" might explain differing perceptions of events that took place at meetings that were the focus of the Committee's hearings. Indeed, the Committee might conclude that imperfections of human memory and differing perceptions understandably account for a number of differences in individuals' recollections of the events described over the six days of the Committee's hearings.

We raise the issue of the "Rashomon" effect -- the impact of perception on recollections of events -- because even though participants at the February 2 meeting testified with considerable consistency as to what took place at that meeting, it is very possible that that meeting now could be viewed by Committee Members in light of events that occurred well after the meeting. This is a critical point for Mr. Nussbaum, who

ARNOLD &amp; PORTER

The Honorable Donald W. Riegle, Jr.  
October 7, 1994  
Page 12

testified forthrightly, consistently and courageously about his statements at the February 2 meeting and the policy concerns underlying his statements. In explaining his actions to the Committee, he faces the possible perception of his conduct on February 2 not as it occurred on that date, but in light of critical later events.

Those subsequent events include, in particular, Mr. Altman's testimony before this Committee on February 24 and the issue whether he fully described, on questioning by Senators, what occurred at the February 2 meeting and in other White House-Treasury contacts. This created, in the words of White House Counsel Cutler, a "firestorm."

Mr. Cutler admittedly had difficulty separating his judgments about the wisdom or propriety of Mr. Nussbaum's statements at the February 2 meeting from what occurred subsequently. For example, Mr. Cutler acknowledged that Mr. Altman was not legally or ethically required to recuse himself and had ethics advice to that effect, confirmed by later findings of the independent Office of Government Ethics. Nonetheless, Mr. Cutler testified that he believed White House officials at the February 2 meeting should have

ARNOLD & PORTER

The Honorable Donald W. Riegle, Jr.  
October 7, 1994  
Page 13

encouraged Mr. Altman to recuse himself. Mr. Cutler testified "And let me add that that is as much a political judgment, especially in hindsight -- than a legal judgment."

We highlight Mr. Cutler's statements for the Committee, because we believe they are clear evidence that subsequent events and actions by persons other than Mr. Nussbaum may impact the perceptions of Mr. Nussbaum's actions on February 2. We believe this is understandable, but unfair. Mr. Nussbaum should not be held accountable for the fact that some may believe that Mr. Altman did not give complete testimony before the Committee as to the Treasury/White House meetings and the content of those meetings when he testified February 24, or when he described those events in the recent hearings before this Committee.

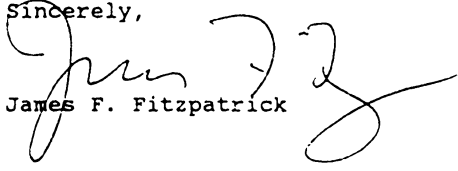
We therefore urge the Committee, in making judgments about Mr. Nussbaum's actions, to focus on the policy issues confronting him at the time -- not on the events that followed. While it may be difficult for a Senator to judge Mr. Nussbaum's actions on February 2 without being influenced by the events that followed, fairness requires that it be done.

ARNOLD & PORTER

The Honorable Donald W. Riegle, Jr.  
October 7, 1994  
Page 14

We appreciate the opportunity to present these supplemental views to the Committee. We would be pleased to meet with you to discuss in greater detail any of the facts or policy issues discussed in this letter.

Sincerely,

  
James F. Fitzpatrick

RONALD E. SLAYTON  
 600 N. LEE  
 TROY, N. CAROLINA  
 GEORGE E. POST (Jr)  
 BRADLEY A. BOWEN  
 ALEXANDER S. WOOD  
 STEPHEN C. BERNARD  
 ROBERT M. SLAYTON  
 THOMAS H. BUTTER  
 BEN E. GETHMAN  
 DONALD A. LIND  
 JAMES E. MCDONALD  
 GARY L. WATSON JR.  
 WILLIAM T. LUTON JR.  
 DONALD E. SPAN  
 STEVEN A. COHEN  
 CHAS. J. PUGH  
 DONALD E. SPAN  
 GUY W. WATSON

WACHTELL, LIPTON, ROSEN & KATZ

Ms. Kelly Cordes  
November 11, 1994  
Page 2

caused to be sent a copy of Congressman Leach's letter and the attachments to Beth Nolan. I do not recall providing X001355-X001372 (or any of the individual pages) to any other White House personnel.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Clinton", with a long horizontal flourish extending to the right.

BWN:rom

LLOYD N. CUTLER  
2445 M STREET, N.W.  
WASHINGTON, D.C. 20037-1420

October 28, 1994

BY MESSENGER

Donald W. Riegle, Jr., Chairman  
Committee on Banking, Housing  
and Urban Affairs  
United States Senate  
Washington, D.C. 20510

Dear Chairman Riegle:

Following are responses to the post hearing questions of Senator Bond that you presented with your letter of September 28, 1994. I appreciate your willingness to extend the time for my response.

Question 1: When did the White House tell Treasury personnel that you wanted copies of the Treasury/RTC depositions? To whom was this request communicated? Was the request made for all deposition transcripts, or was it simply for the transcripts of White House personnel?

Answer 1: On July 5, 1994, lawyers from the Office of White House Counsel told Treasury personnel that the White House would like to receive transcripts of then-upcoming Treasury/RTC depositions. This request was later restated on other occasions during July 1994. The request was communicated to Francine Kerner, Stephen McHale, Ken Schmalzbach and Secretary Bentsen. The request was for all deposition transcripts.

Question 2: Please provide a copy of the letter from Mr. McHale to Ms. Sherburne which describes how the White House was able to use the deposition transcripts.

Answer 2: A copy of a July 23, 1994 letter from Mr. McHale to Ms. Sherburne is attached to this response.

Question 3: On what basis were redactions made to documents produced to the Committee? Were redactions made

Donald W. Riegle, Jr., Chairman  
October 28, 1994  
Page 2

only for relevance as Ms. Cheston stated to minority staff of the House Banking Committee?

Answer 3: We have consistently stated that material was redacted from documents produced to the Committee because it was not responsive to the Committee's request for information relating to the subjects of the hearing. No redactions were made on privilege grounds. Our response to requests from the House Banking Committee was the same.

Question 4: What was the basis for the redactions in the document marked X001156-X001159. When was Bruce Lindsey given a copy of this document?

Answer 4: The material redacted from document X001156-59 was not responsive to the Committee's document request. As the document notes, its subject is "Whitewater--Senate Banking Committee Hearing and Other Recent Activity." The redacted portions describe aspects of the Senate Banking Committee Hearing that are unrelated to the Committee's request.

Question 5: What was the basis for the redactions in the document marked X001169-X001174? Who drafted this document?

Answer 5: The material redacted from document X001169-74 was not responsive to the Committee's document request. The redacted portions of the document, which is a chronology, describe events that are unrelated to the Committee's request. Kevin O'Keefe drafted this document.

Question 6: Please provide all analyses indicating that it is appropriate for White House personnel to receive confidential RTC information pertaining to criminal referrals from either RTC or Treasury personnel.

Answer 6: The following are among the analyses that support a conclusion that it is appropriate for the White House Counsel to receive confidential information from an Executive branch agency with law enforcement responsibilities about certain criminal or civil investigations or proceedings:



Donald W. Riegle, Jr., Chairman  
October 28, 1994  
Page 3

Inquiry into the Matter of Billy Carter and Libya,  
Report of the Committee on the Judiciary,  
Subcommittee to Investigate Individuals  
Representing the Interests of Foreign Governments,  
United States Senate, No. 96-1015, 96th Congress,  
2d Session, October 2, 1980.

Report to the Secretary of the Treasury from the  
Office of Government Ethics, July 31, 1994.

Lloyd N. Cutler, "A Heads-Up History," Washington  
Post, August 3, 1994.

Terry Eastland, "Cutler's Lessons for Mikva," Wall  
Street Journal August 17, 1994.

Question 7: What is the basis for the redactions in Documents  
X001156-X001159 and X000540? Why are these  
apparently similar documents redacted differently?

Answer 7: The material redacted from documents X001156-59  
and X000540-543, which are the same document from  
two different files, was not responsive to the  
Committee's document request. As both copies of  
the document note, its subject is "Whitewater--  
Senate Banking Committee Hearing and Other Recent  
Activity." The redacted portions describe aspects  
of the Senate Banking Committee Hearing that are  
unrelated to the Committee's request. There are  
no material differences in the way these two  
documents were redacted.

Question 8: What is the basis for redactions in Document  
X001169?

Answer 8: As stated in response to Question 5, the material  
redacted from document X001169-74 was not  
responsive to the Committee's document request.  
The redacted portions of the document, which is a  
chronology, describe events that are unrelated to  
the Committee's request.

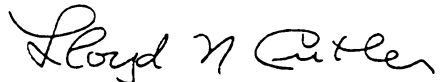
Question 9: What is the basis for redactions in Document  
X000466-X000469? Did Mr. Nussbaum have the  
original or a copy of this document in his files?

Answer 9: The material redacted from X000466-469 was not  
responsive to the Committee's request for

Donald W. Riegle, Jr., Chairman  
October 28, 1994  
Page 4

information related to communications between officials of the White House and the Department of Treasury on the RTC relating to the Whitewater Development Corporation and the Madison Guaranty Savings and Loan Association. However, on review, it is apparent that the redacted material is responsive to the Committee's request for information relating to the way in which White House officials handled documents in the office of Vincent Foster at the time of his death. Accordingly, we are providing you with an unredacted copy. As indicated on the index that accompanied our document production, this document was located in the files of White House Deputy Counsel, Joel Klein. Mr. Nussbaum did not have either the original or a copy in his files.

Sincerely yours,

  
Lloyd N. Cutler

Enclosures



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

July 23, 1994

BY HAND

Jane Sherburn, Esquire  
Office of the White House Counsel  
The White House  
Washington, D.C.

Dear Jane:

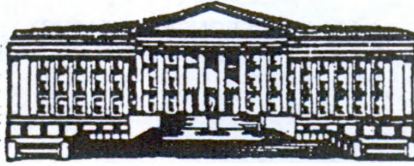
Enclosed are copies of the transcripts of all but one of the interviews conducted by the Treasury Inspector General as part of his investigation into contacts between Treasury and White House officials concerning Madison Guaranty. We have not yet received the transcript of the interview of Mr. McLarty.

As we discussed, these transcripts are being provided to you solely to assist you in the preparation for Mr. Cutler's testimony before the House and Senate Banking Committee hearings. You have agreed that the transcripts we are providing to you with this letter will not be disclosed publicly or shown to individuals (other than Mr. Cutler) who may be called as witnesses by either Committee until such time as we advise you that this restriction is no longer necessary. Similarly, you have agreed not to disclose these transcripts to counsel for any such individuals. Please let me know immediately if my understanding of our agreement is not correct.

Sincerely,

A handwritten signature in dark ink, appearing to read "S. J. McHale".

Stephen J. McHale  
Deputy Assistant General Counsel  
(Administrative & General Law)



## FACSIMILE COVER SHEET

OFFICE OF THE  
ASSISTANT SECRETARY FOR ENFORCEMENT  
DEPARTMENT OF THE TREASURY

Phone # (202) 622-0240

Fax # (202) 622-1486

DATE: 3-7-94Page 1 of 4TO: Bernard NussbaumPHONE: 456-2632FAX: 456-6279FROM: Ronald NobleMESSAGE: Personal & Confidential

**MY REPUTATION FOR INTEGRITY: CAN I MAINTAIN IT IN WASHINGTON?**

Prior to leaving my position on the faculty of the New York University School of Law to join the Clinton Administration, I spoke to a group of NYU's students about my goals while in Washington. To people unfamiliar with Washington, my goals might appear simple: maintain my reputation for integrity; contribute to Treasury law enforcement; and remain somewhat anonymous. People familiar with Washington recognize the difficulty presented by the first -- maintaining one's reputation for integrity.

First, Bernard Nussbaum as White House Counsel occupied center stage with regard to most White House related controversies. His integrity came under fire for the manner in which he controlled the U.S. Park Service's examination of the Mr. Foster's office.

Mr. Foster's body was found many miles from his office -- the victim of an apparent suicide. Indeed, no reported evidence discovered by the Park Service prior to requesting to examine Mr. Foster's office suggested any cause other than suicide. Moreover, no evidence other than pure speculation caused the Park Service to believe that they would find any information relating to criminal activity on Mr. Foster's part or the part of anyone else. In fact, based on everything I have read, the Park Service never would have had sufficient evidence to obtain a search warrant for Mr. Foster's office.

But for the cooperation of the President and Mr. Nussbaum, the Park Service would have been forced to issue a subpoena requesting all information, materials and documents relating to the cause of Mr. Foster's death (like Robert Fiske, the independent counsel, issued). That subpoena would have been served on the White House Counsel, Mr. Nussbaum, and he would have been obligated to produce any such material within the call of the subpoena. Instead, Mr. Nussbaum permitted the Park Service to enter Mr. Foster's office and examine it, but not without limitation.

Prior to permitting the inspection by the Park Service, Mr. Nussbaum determined whether the information would be relevant as he would if a subpoena were issued. For that, Mr. Nussbaum's integrity has been attacked. Does anyone think that the Park Service would have recognized the difference between Madison Guaranty/ Whitewater materials and a "suicide" note? Of course they would have. Does anyone think that the Park Service has a particular expertise in identifying a "suicide" note? Probably not.

Would I have handled it differently? Probably. I would have allowed the Park Service to inspect the office without limitation because (and I say this with all due respect to the Park Service) they would not have a clue about the relevance of 99% of the material in Mr. Foster's office. But, Mr. Nussbaum's decision to

regulate the Park Service's behavior was entirely justifiable under the circumstances reported in the press. The Park Service's only legitimate purpose in inspecting Mr. Foster's office was to find out why Mr. Foster killed himself.

Let me give you an example closer to home. I have a tremendous fear of flying. There is something about having no control of my destiny while in the air. Shortly after Mr. Foster's suicide I flew to Europe leaving my office in disarray. (My mother always has warned me against leaving my room, apartment or office in disarray in the event that something happened to me. What would people think?) While on the plane, I wondered what would happen (besides the obvious) if I jumped from the plane while cruising thousands of feet above the earth.

My suicide would be obvious. Nonetheless, would the FBI or Secret Service attempt to search my office? Would my staff do the right thing and clean my office before the arrival of the outsiders? What would they do if my personal belongings contained a secret of my family or of a client from a case handled by me prior to arriving in Washington?

Would someone I trusted have the decency to screen my personal files in my briefcase, including letters to and from my parents? What would happen if they found a letter expressing my sadness at having failed my family, close friends or colleagues? Would my colleagues/friends be permitted to withhold this letter until they had shown it to my family?

Mr. Nussbaum, as White House Counsel, apparently made the judgment that he did not wish to give the Park Service free rein to engage in a fishing expedition in his Deputy's office when they had no articulated basis for believing that they would find any evidence of criminal activity. In my view Mr. Nussbaum made a tactical error in the way he handled this matter. A better strategy would have been to permit the Park Service to inspect the entire office -- assuming the officers had the proper security clearances. My reason is straightforward. Neither the Park Service, I, nor anyone else would have been able to make much sense of anything in Mr. Foster's office except a "suicide" note. Thus, permitting a free search would have posed little risk of confidential/private communications being circulated in public, and it would have gained the public's confidence.

Then, why has Mr. Nussbaum's integrity been attacked for his mistake in the handling of this matter? As Mr. Foster said, "in Washington ...."

Last week news reports and editorials intimated that three of my colleagues and one former colleague had made a mistake involving the Resolution Trust Corporation ("RTC"). My colleagues had contacted Mr. Nussbaum about the RTC's investigation into activities of Madison Guaranty/Whitewater. Though there is no evidence to support evil motives, some have accused my colleagues

of engaging in behavior to influence the outcome of the activities of an independent regulatory agency. The silence in their support has been deafening.

I have no personal knowledge of what happened, but I do know Roger Altman, Jack Devore, Jean Hanson and Josh Steiner; therefore, I cannot remain silent. These individuals represent the highest ideals of integrity and honesty. During the time that I have known them, not one occasion has arisen where I have had to question their integrity. To the contrary, they have strived to ensure that the interests of the President, the Secretary, the Department of the Treasury and the American people were properly, ethically and honestly represented. In my view there are no finer public servants than these individuals.

I worry that there will be other people who arrived in Washington with stellar reputations, but who will leave this city unable to have achieved what I described above as a simple goal -- the maintenance of one's reputation for integrity.

